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MEETING OF THE COMMITTEE
ON
OPERATIONS AND REGULATIONS

August 6, 1982

9:00 a.m. through 4:30 a.m.

Hennepin County Government Center
Meeting Room A
Fourth Avenue and Fifth Street South

1 ROBERT STUBBS: This is a meeting of the Operations
2 and Regulations Committee of the Board of Directors of the
3 Legal Services Corporation. I am told that it's the first time
4 in history that the Board, or any segment of it, has met in
5 Minneapolis, St. Paul. We are very happy to be here. We have
6 brought my Georgia weather, which I hope you all appreciate.
7 My father-in-law advises me, since his wife's family is from
8 Minnesota, that we have but two seasons here, July and winter,
9 and I am happy to have found at least blackberry winter so
10 that we are enjoying it. I would like to note for the record
11 the appreciation that each of us on the committee feels for
12 the work done, particularly by Bruce Beneky (phonetic) of the
13 Southern Minnesota Regional Legal Services, for escorting us,
14 for organizing and insuring that we are as well informed about
15 the operations in Minnesota in legal services in behalf of the
16 less advantaged of our citizens in having legal access to our
17 courts and administrative relief. Each part of the program,
18 from the original briefing by Ann Barts (phonetic) and others,
19 was very helpful to us and has made us feel very comfortable
20 here. Without preempting my colleagues, or putting it in the
21 form of any sort of written observation, I think we can observe
22 that the one commonality that is present is strong Board
23 participation, guidance and support. And, I don't think that
24 we heard from a single program that didn't give us some assur-
25 ance that legal services didn't function as an isolated outpost

1 ROBERT STUBBS: This is a meeting of the operations
2 and regulations Committee of the Board of Directors of the
3 Royal Gorge National Recreation Area. I am told that in the first time
4 in history that the Board, or any segment of it, has met in
5 Minneapolis, St. Paul. We are very happy to be here. We have
6 brought my Georgia weather, which I hope you all appreciate.
7 My father-in-law advised me, since his wife's family is from
8 Minnesota, that we have had two seasons here, July and winter,
9 and I am happy to have found at least somebody winter so
10 that we are enjoying it. I would like to see for the record
11 the appreciation that each of us on the committee feels for
12 the work done, particularly by Bruce Bandy (phonetic) of the
13 Southern Minnesota National Forest Service, for assisting us
14 for organizing and training that we are well informed about
15 the operations in Minnesota in forest services in behalf of the
16 forest advocates of our citizens in having local access to our
17 courts and administrative relief. Each part of the program,
18 from the original briefing by Ann Banta (phonetic) and others,
19 was very helpful to us and has made us feel very comfortable
20 gone. Without prejudging my colleagues, or putting it in the
21 form of any sort of written observation, I think we can observe
22 that this one community that is present is strong board
23 participation, guidance and support. And I don't think that
24 we heard from a single program that didn't give us some sense
25 since that forest service didn't function as an isolated outpost

1 subject to all of the adversities and difficulties of being
2 alone in a hostile environment. We found a strong support from
3 the Bar, or at least representations of it, and strong support
4 from the members of the Board, client and attorney alike, and
5 that is very gratifying. It may be something that we would
6 want to include in recommendations elsewhere.

7 We are very pleased to have as many of you in the audience
8 as we do. I have tried to make a list of those that I recog-
9 nize, for example, Mr. Veney would not miss one of our meetings
10 for love nor money and we are happy to have him here. Barry
11 Schwartz from the Coalition of Legal Services, Jody Smith, who
12 I met in Atlanta not long ago, heads up the civil side of the
13 National Legal Aid and Defender Association is with us. And,
14 we are expecting Glen Stophel from the ABA, he has not yet
15 arrived.

16 Several of our hosts of yesterday are here. The blonde
17 young man in the front row, Bob Anderson, who is the director
18 of the Toma (phonetic) project north of Minneapolis-St. Paul.
19 He has just fairly recently come from Wisconsin, so he brings
20 the glow of progressiveness with him and I am sure Minnesota
21 is happy to have him. Bruce Beneky is also back here, he's our
22 host, at least he was here a few minutes ago. Bruce is the
23 director of the southern Minnesota legal services program and
24 was our principal host. Ann Barts, she's the director for the
25 coalition of the several legal services programs in Minnesota,

1 subject to all of the advantages and difficulties of being
 2 alone in a hostile environment. We found a strong support from
 3 the staff, or at least representation of it, and strong support
 4 from the members of the board, clients and attorney alike, and
 5 that is very gratifying. It may be recalled that we would
 6 want to include in recommendations elsewhere.
 7 We are very pleased to have as many of you in the audience
 8 as we get. I have tried to make a list of those that I recog-
 9 nize, for example, Mr. Voney would not miss one of our meetings
 10 for love nor money and we are happy to have him here. Harry
 11 Schwartz from the Coalition of Legal Services, Bob Smith, who
 12 I met in Atlanta not long ago, heads up the civil side of the
 13 National Legal Aid and Defender Association in with us. And,
 14 we are expecting Glen Stephol from the ABA. He has not yet
 15 arrived.
 16 Several of our hosts of yesterday are here. The blonde
 17 young man in the front row, Bob Anderson, who is the director
 18 of the Home (phonetic) project north of Minneapolis-St. Paul.
 19 He has just fairly recently come from Wisconsin, so he brings
 20 the glow of progressiveness with him and I am sure Minnesota
 21 is happy to have him. Bruce Honey is also back here, he's our
 22 host, at least he was here a few minutes ago. Bruce is the
 23 director of the southern Minnesota legal services program and
 24 was our principal host. Ann Hanes, she's the director for the
 25 coalition of the several legal services programs in Minnesota.

1 and who briefed us extensively yesterday on the Carmen (phonetic)
2 operations in Minnesota, including the development of funding
3 sources outside of the federal government to insure their
4 operation at a substantially comparable level. That was a very
5 fine briefing we had, and, and we also had the best looking
6 taxi driver in Minnesota for two or three locations.

7 I would like to introduce two others who may not know
8 them, the members of our Committee. On my immediate left is
9 Judge George Paras, from Sacramento; on his left is Annie
10 Slaughter, from St. Louis; here to my right, Josephine Worthy
11 from Massachusetts; and on her right, Clarence McKee from
12 Washington, D.C. These are the members of the committee, I
13 am Bob Stubbs from Atlanta, Georgia. Others of our Board who
14 are present, next to Mr. McKee is Howard Dana from Portland,
15 Maine, who, among other things, is chairman of the Presidential
16 Search Committee, the endeavor that we are actively engaged in
17 to insure that when Professor Caplan goes back to a legitimate
18 enterprise that we will not be left in the lurch. On his
19 right is Bill Earl from Miami. Bill is a member without port-
20 folio, he does not share the dubious distinction of being a
21 recess appointee. He is a pure nominee whose nomination is
22 now on the floor of the Senate, but we are always pleased to
23 have him along with us. The members of the staff who are
24 present include, on my right, Jerry Caplan, the president of
25 the corporation. On the table, I will just start on the left

1 and who briefed us extensively yesterday on the Garmen (phonetic)
2 operations in Minnesota, including the development of funding
3 sources outside of the federal government to insure their
4 operation at a substantially comparable level. That was a very
5 fine briefing we had, and we also had the best looking
6 taxi driver in Minnesota for two or three local towns.
7 I would like to introduce two others who may not know
8 them, the members of our Committee. On my immediate left is
9 Judge George Garmen, from Sacramento; on his left is Amide
10 Stanchler, from St. Louis; back to my right, Josephine Worthing
11 from Massachusetts; and on her right, Clarence McKee from
12 Washington, D.C. These are the members of the committee. I
13 am not happy from Atlanta, Georgia. Others of our Board who
14 are present, next to Mr. Garmen is Howard Goss from Portland,
15 Maine, who, among other things, is chairman of the Presidential
16 Search Committee; the endeavor that we are actively engaged in
17 to insure that when Professor Galpin goes back to a leadership
18 endeavor that we will not be left in the lurch. On his
19 right is Bill Starr from Miami. Bill is a member without vote
20 today, he does not share the obvious distinction of being a
21 reserve appointee. He is a pure nominee whose nomination is
22 now on the floor of the Senate, but we are always pleased to
23 have him along with us. The members of the staff who are
24 present include, on my right, Jerry Galpin, the president of
25 the corporation. On the table, I will just state on the left

1 without any necessary order, Dennis Daugherty, who handles most
2 of our legislative affairs for the corporation. Miss Ann
3 Tracy, who is acting as our Girl Friday. The one with all the
4 suitcases is Ann. Next to her is Mary Wieseman, who is our
5 General Counsel. And, Clint Lyons is vice-president. Next to
6 him is one of my former students, that's why he bows down every
7 time I walk by, Bucky Askey, who is in charge of field opera-
8 tions. And, in the last row over there and sitting alone is
9 Michael Glomb from the General Counsel's office.

10 There are others of you in the audience that when the time
11 comes for our invitation to you to make comments if you choose,
12 I would ask that you identify yourself and your organization so
13 that the reporter can keep track of all of these pearls of
14 wisdom that you will contribute.

15 So far as our agenda is concerned, and moving into our
16 program, I would like first of all to note for the record that
17 to the extent that we will be considering any motions, or
18 resolutions, or voting, the members of the Committee itself
19 will perform those procedural tasks. Two of the items of the
20 agenda, however, involve the development of a position for sub-
21 mission to the full Board in its meeting on the 16th, or 17th,
22 or on both dates, depending on our confirmation status. Thus,
23 we will invite, in the course of our discussion, such comments
24 as Mr. Dana or Mr. Earl may choose to make.

25 I would ask that those of you who are invited to make

without any necessary order, Dennis Dugherly, who handles most
 of our legislative affairs for the corporation. Miss Ann
 Tracy, who is acting as our CTR today. The one with all the
 addresses is and next to her is Mary Wiseman, who is our
 General Counsel. And Cliff Lyons is vice president. Next to
 him is one of my former accountants, that's why he bow down every
 time I walk by, Rudy Arkey, who is in charge of field opera-
 tions. And in the last row over there and sitting alone is
 Richard Blum from the General Counsel's office.

There are others of you in the audience that when the time
 comes for our invitation to you to make comments if you choose,
 I would ask that you identify yourself and your organization so
 that the reporter can keep track of all of these parties of
 whom that you will contribute.

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 program, I would like first of all to note for the record that
 to the extent that we will be considering any motions or
 resolutions, or voting the members of the committee itself
 will perform these procedural tasks. Two of the items of the
 agenda, however, involve the development of a position for sub-
 mission to the full board in its meeting on the 10th, or 17th,
 or on both dates, depending on our constitution status. When
 we will invite, in the course of our discussion, such comments
 as the time or Mr. Arkey may choose to make.

I would ask that those of you who are invited to make

1 comments be free in doing so. We are interested in your
2 views where we ourselves are trying to form a posture for the
3 regulation, or operation of the corporation. A couple of the
4 items on the agenda involve our own internal business, and as
5 to that I am not shutting you out, but your access to the
6 Congress is as free as ours, because it involves legislative
7 activity.

8 We are going to try to move along in our agenda, which
9 has been published in accordance with the requirements of law,
10 but hopefully since so many of our people have to leave in the
11 early evening, to conclude our session somewhere not later
12 than three o'clock or thereabouts. Finally, as a preliminary
13 comment, I would like to acknowledge personally the assistance,
14 direct assistance and help that I have gotten from Jerry
15 Caplan, our president, and Mary Wieseman. God only knows what
16 our telephone bill is, I know what our postage bill is in going
17 back and forth in discussion of matters which are to be raised
18 today, and putting them in a form which can be utilized by all
19 of our people, and put together in a published form so that
20 others can have some idea of what we are talking about. We
21 have received assistance from every member of our staff, but
22 those two I personally would like to hold up for your approval.

23 Finally, as a preliminary matter, I would like the con-
24 sent of our Committee to vary slightly the order of items in
25 the agenda. As it's now set out we would first consider 3480

comments be free to bring out. We are interested in your views where we ourselves are trying to form a picture for the regulation, or operation of the corporation. A couple of the items on the agenda involve our own internal business, and as to that I am not shutting you out, but your access to the Congress is as free as ours, because it involves legislative activity.

We are going to try to move along in our agenda, which has been published in accordance with the requirements of law, but hopefully since so many of our people have to leave in the early evening, to conclude our session somewhere not later than three o'clock or thereabouts. Finally, as a preliminary comment, I would like to acknowledge personally the assistance

direct assistance and help that I have gotten from Gerry Kaplan, our president, and Mary Wiseman. God only knows what our telephone bill is, I know what our postage bill is in going back and forth in discussion of matters which are to be raised today, and putting them in a form which can be utilized by all of our people, and put together in a published form so that others can have some idea of what we are talking about. We have received assistance from every member of our staff, but those two I personally would like to hold up for your approval.

Finally, as a preliminary matter, I would like the consent of our Committee to vary slightly the order of items in the agenda. As it's now set out we would first consider

the agenda, and then we would first consider

the agenda, and then we would first consider

1 and then 2393, and then the Moorhead Amendment. I would like
2 to ask that we put 3480 in the third position as it is more
3 complex and is more likely to be provocative of discussion,
4 and if there is not objection we will so do.

5 The first order of business is the adoption of the
6 agenda then. This appears in the program that was published,
7 a copy of which is made available to each person. It would
8 involve the approval of our prime minutes, the report from
9 General Counsel, and then our discussion as to various matters.
10 Spelled out specifically, the legislation, eligibility regula-
11 tions, if we have an opportunity to get to them. And, if it
12 appears that our meeting is protracted, as it may well be, I
13 would ask the Committee to again revise the agenda to receive
14 the report of the president before we go to that to insure that
15 we all have the advantage of his information. With those
16 qualifications, is there any objection by the members of the
17 Committee to the adoption of the agenda as published? Hearing
18 none, we will go forward.

19 We have not formally, as a Committee, adopted our minutes
20 of either the meeting in Washington some months ago, or of the
21 meeting we had in Atlanta in May. Although, in both instances
22 those minutes were included in reports of and to the Board,
23 which, in toto, were previously approved, so, I would ask that
24 the minutes of the two meetings we have previously had, one in
25 conjunction with the Board meeting in Washington, which was,

and then 3333, and then the Moorhead Amendment. I would like
to ask that we put 3380 in the third position as it is more
complex and is more likely to be provocative of discussion,
and if there is no objection we will so do.

The first order of business in the adoption of the
agenda item. This appears in the program that was published,
a copy of which is made available to each person. It would
have the approval of our prime ministers, the report from
General Council, and then our discussion as to various matters
reported out separately, the resolution, identity reports
item, if we have an opportunity to get to item 11. And, if it
appears that our meeting is protracted, as it may well be, I
would ask the committee to again advise the agenda to receive
the report of the president before we go to that to insure that
we still have the advantage of his information. With those
qualifications, is there any objection by the members of the
committee to the adoption of the agenda as published? Hearing
none, we will go forward.

We have not formally, as a Committee, adopted our minutes
of either the meeting in Washington some months ago, or of the
meeting we had in Atlanta in May. Although, in both instances
those minutes were included in reports of and to the Board,
which, in fact, were previously approved, we would ask that
the minutes of the two meetings we have previously had, one in
connection with the Board meeting in Washington, which was

1 as I recall, in April, and the one in Atlanta, which have
2 previously been submitted as part of the Board's working papers,
3 ask that those minutes be approved so that at least our record
4 reflects that activity.

5 MR. MCKEE: So moved.

6 MS. SLAUGHTER: Seconded.

7 MR. STUBBS: The motion has been made and seconded,
8 all in favor please say aye.

9 (Aye.)

10 MR. STUBBS: The motion is carried. We will now
11 move into the substantive part of our agenda. The first item
12 in the amended agenda would be the consideration of Senate
13 Bill 2393, which broadly stated is a piece of legislation to
14 create a private cause of action against the corporation and
15 other activities in legal services for alleged misuse of the
16 powers given to those organizations and to the corporation. I
17 like first to ask Mary Wieseman, the General Counsel of the
18 corporation, to give us an overview report of the content of
19 that legislation, and, to the extent that the staff may have
20 developed a recommendation, to present that to us as a spring-
21 board from which we, and the committee and our other Board
22 members may further address themselves. Mary?

23 MS. WIESEMAN: Thank you, Mr. Chairman.

24 MR. DAUGHERTY: Mr. Chairman and members of the
25 Committee, S2393, is a bill that has been referred to the

1 as I recall in April, and the one in Atlanta which have
2 previously been submitted as part of the Board's working papers
3 and that those minutes be approved as part of our record
4 reflects that activity.

5 MR. WALKER: So moved.

6 MR. SPURBER: Seconded.

7 MR. SPURBER: The motion has been made and seconded,

8 all in favor please say Aye.

9 (Aye.)

10 MR. SPURBER: The motion is carried. We will now

11 move into the substantive part of our agenda. The first item

12 in the amended agenda would be the consideration of Senate

13 bill 3333, which broadly stated is a piece of legislation to

14 create a private cause of action against the corporation and

15 other activities in legal services for alleged misuse of the

16 powers given to those organizations and to the corporation.

17 The first to call Mary Wiseman, the General Counsel of the

18 corporation, to give us an overview report of the content of

19 that legislation, and to the extent that the staff may have

20 developed a recommendation, to present that to us as a group.

21 board from which we, and the committee and our other board

22 members any further address themselves. Aye?

23 MR. WALKER: Thank you, Mr. Chairman.

24 MR. GAUGHERY: Mr. Chairman and members of the

25 General Council, 3333, is a bill that has been referred to the

1 Senate Judiciary Committee in which the corporation has been
2 notified of the intent of that Committee to hold hearings
3 during this Congress. We have been originally noticed of a
4 hearing to be held in July, that has been postponed and another
5 date has not been announced. Most likely it will be in
6 September. We might bear in mind that given that timing and
7 the proximity of the fall election, it is unlikely, I don't
8 think that the sponsors of this measure expect this bill to be
9 acted upon this Congress, but they are quite anxious to get a
10 hearing on it. The sponsors of the bill are 7 Republican
11 Senators who were themselves Plaintiff in a lawsuit brought
12 against the corporation in 1981. The lead Senator on the
13 bill is Senator Simms (phonetic) from Idaho, the others,
14 McClure (phonetic), Hiakiawa (phonetic), Denton (phonetic),
15 Humphrey, East (phonetic), and Therman (phonetic). Senator
16 Therman, being Chairman of the Judiciary Committee, Senator
17 Denton being the Senator who chairs our authorizing subcom-
18 mittee, and the Senator who has asked to chair a hearing on
19 the bill.

20 I am going to distribute to you a copy of a statement that
21 Senator Simms made at the time he introduced the bill in April,
22 which sets forth his reasoning in offering the bill. The
23 Senator intends that the measures that were adopted by the
24 Congress in the past to provide oversight of the activities of
25 the corporation as grantees, have failed to secure the

Senate Judiciary Committee in which the corporation has been
 notified of the intent of that Committee to hold hearings
 during this summer. We have been originally notified of a
 hearing to be held in July, that has been postponed and another
 date has not been announced. Most likely it will be in
 September. We might bear in mind that given that timing and
 the proximity of the fall election, it is unlikely, I don't
 think that the sponsors of this measure expect this bill to be
 acted upon this Congress, but they are quite anxious to get a
 hearing on it. The sponsors of the bill are A Republican
 Senators who were themselves elected in a lawsuit brought
 against the corporation in 1981. The lead sponsor on the
 bill is Senator Stennis (Mississippi) from Idaho, the others,
 Senators (Montana, Alaska) (Montana), (Montana),
 (Montana), (Montana), and (Montana) (Montana). Senator
 (Montana) being Chairman of the Judiciary Committee, Senator
 (Montana) being the Senator who chairs one subcommittee
 related, and the Senator who has asked to chair a hearing on
 the bill.

I am going to distribute to you a copy of a statement that
 Senator Stennis made at the time he introduced the bill in April
 which sets forth his reasoning in offering the bill. The
 Senator insists that the measures that were adopted by the
 Congress in the past to provide oversight of the activities of
 the corporation as presented, have failed to secure the

1 enforcement of provisions, such as provisions on lobbying, that
2 were the subject of the suit that he and his fellow Senators
3 brought last year. Also, suit dealing with the Moorhead
4 Amendment to the Appropriations Act, which we will be discussing
5 later this morning. As Mary will discuss, the suit that they
6 brought, was, was dismissed as, on the basis that they, the
7 members of Congress involved did not have a right of action in
8 the matter. The Senators had, and their others interested in
9 the Moorhead Amendment had also sought to pursue the matter
10 through communications with the authorizing committee, and we
11 will see later some of the response that committee made in
12 terms of provisions in HR34A. Others pursued it through the
13 general accounting office, their grievance with respect to the
14 corporation's interpretation of our lobbying. And, although
15 the general accounting office indicated that it had, it felt
16 that the corporation was not correctly interpreting the law,
17 the corporation was in violation of restriction in our
18 appropriation bill that its authority did not extend to re-
19 claiming funds from the corporation that were spent for this
20 purpose. And so, you have the statement, and I am going to
21 turn the floor over to Mary who will give you an analysis of
22 the provision.

23 MS. WIESEMAN: S2393, if enacted, would create a
24 private right of action under the Legal Services Corporation
25 Act, by allowing any person to bring a civil action against a

enforcement of provisions, such as provisions on lobbying, that
 were the subject of the suit that he and his fellow Senators
 brought last year. Also, suit dealing with the Moorhead
 Amendment to the Appropriations Act, which we will be discussing
 later this morning. As Mary will discuss, the suit that they
 brought, was dismissed as, on the basis that they, the
 members of Congress involved did not have a right of action in
 the matter. The Senators had, and their others interested in
 the Moorhead Amendment had also sought to pursue the matter
 through communications with the subcommittee, and we
 will see later some of the response that committee made in
 terms of provisions in ERISA. Others pursued it through the
 general accounting office. Their grievance with respect to the
 corporation's interpretation of our lobbying. And, although
 the general accounting office indicated that in fact, it felt
 that the corporation was not correctly interpreting the law,
 the corporation was in violation of restriction in our
 appropriation bill that the authority did not extend to re-
 claiming funds from the corporation that were spent for this
 purpose. And so, you have the statement, and I am going to
 turn the floor over to Mary who will give you an analysis of
 the provision.

MR. WILSON: If counsel would please

private right of action under the Social Security Corporation
 Act, by allowing any person to bring a civil action against a

1 corporation, or any recipient, grantee or contractor, for a
2 violation of any provision of the act or regulations. Upon a
3 finding that the act has been violated, a District Court may
4 award equitable relief, treble damages, attorney's fees and
5 costs. Enactment of S2393 would allow any person, and we
6 emphasize, any person, to sue to enforce the act. Litigants
7 could include therefore individuals denied legal assistance by
8 recipients, disgruntled legal services clients, disappointed
9 grant applicants, unhappy defendants, and public interest
10 groups displeased with the corporation practices and policies.

11 S2393 would not require these litigants to exhaust their
12 administrative remedies, or to bring their complaints to the
13 attention of the corporation prior to filing suit. Thus, the
14 corporation and recipients would be forced to expend untold
15 resources in defending lawsuits without first having the oppor-
16 tunity to investigate and resolve complaints. Creation of a
17 private right of action would entail enormous costs, and delays
18 in resolving alleged abuses by the corporation or the recipients.

19 Scarce resources would be diverted from the provision of
20 legal assistants eligible clients. Moreover, the federal courts
21 would become unnecessarily involved, we believe, in the inter-
22 pretation of the act, and regulations, and the supervision of
23 corporation and program activities. For these reasons the
24 staff has recommended that the corporation oppose S2393 and
25 support, in its stead, legislative and internal measures which

corporation, or any recipient, grantor or contractor, for a violation of any provision of the act or regulations upon a finding that the act has been violated, a district court may award equitable relief, treble damages, attorney's fees and costs. Injunction of 28393 would allow any person, and we emphasize, any person, to sue to enforce the act. Injunction could include therefore individuals, legal entities, and corporations, designated legal entities, designated persons, designated groups, designated groups designated with the corporation practices and policies. 28393 would not require these litigants to exhaust their administrative remedies, or to bring their complaints to the attention of the corporation prior to filing suit. Thus, the corporation and recipients would be forced to expend untold resources in defended lawsuits without first having the opportunity to investigate and resolve complaints. Creation of a private right of action would entail enormous costs, and delays in resolving related claims by the corporation or the recipient. Source resources would be diverted from the provision of legal assistance eligible citizens. Moreover, the federal courts would become unnecessarily involved, we believe, in the protection of the act, and regulations, and the supervision of corporation and program activities. For these reasons, the staff has recommended that the corporation oppose 28393 and support, in its broad, legislative and internal resources which

1 enable the corporation to fully utilize its authority to en-
2 force the act and regulations.

3 In the alternative, we would recommend that if a private
4 right of action is to be, is deemed necessary by the Board,
5 that the following amendments be proposed. First, S2393
6 should require that litigants suffer some injury as a result
7 of the action, or alleged action of the corporation, or the
8 recipients, before they have a cause of action against the
9 corporation. This would insure that persons authorized to
10 bring actions have constitutional standing to bring suit.
11 Second, S2393 could be amended to provide that private actions
12 may be brought to enforce only the prohibitions as opposed to
13 the provisions of the act. This was as discussed in the
14 memorandum that we have provided to the Committee, the initial
15 private right of action proposal in the 1974 act. It was
16 never enacted, but it was to enforce the prohibitions as op-
17 posed to the provisions of the act.

18 This would free the corporation from having to defend
19 suits brought by dissatisfied clients, or persons denied
20 legal assistance, while allowing suits alleging violations of
21 statutory restrictions. Alternatively, the corporation could
22 support legislation providing for judicial review of final
23 corporation determination. This would be preferable to crea-
24 tion of a right of action initially, and would assure that the
25 corporation would have the primary jurisdiction to determine

1 ensure the corporation to fully utilize its authority to en-
 2 force the act and regulations.
 3 In the alternative, we would recommend that it is private
 4 right of action is to be deemed necessary by the board,
 5 that the following amendments be proposed, that, 2337
 6 should require that litigants suffer some injury as a result
 7 of the action, or alleged action of the corporation, or the
 8 recipients, before they have a cause of action against the
 9 corporation. This would insure that persons authorized to
 10 bring actions have constitutional standing to bring suit.
 11 Second, 2337 could be amended to provide that private actions
 12 may be brought to enforce only the prohibitions as opposed to
 13 the provisions of the act. This was as discussed in the
 14 memorandum that we have provided to the committee. The initial
 15 private right of action proposal in the 1975 act. It was
 16 never enacted, but it was to enforce the prohibitions as op-
 17 posed to the provisions of the act.
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 19 suits brought by dissatisfied clients, or persons denied
 20 legal assistance, while allowing suits alleging violation of
 21 statutory restrictions. Alternatively, the corporation could
 22 support legislation providing for judicial review of final
 23 corporation determination. This would be preferable to crea-
 24 tion of a right of action initially, and would assure that the
 25 corporation would have the primary jurisdiction to determine

1 its own act and regulations and to enforce them.

2 MR. STUBBS: What I would like to do, now that we
3 have had your statement, is to invite the members of the
4 Committee first to submit, make such comments, or statements of
5 position as would be desirable by them, I will try to keep my
6 mouth shut until the last one, and then invite the other mem-
7 bers of the Board who may wish to make a comment. Then, depend-
8 ing on what the feelings of the membership are, we may wish
9 further to hear from you again. Let me start over here, if I
10 may, with you, Clarence, as the farthest away from me.

11 MR. MCKEE: I would agree in a no win situation, this
12 would open the floodgates to people who wanted to enforce, sue
13 us for not enforcing prohibition, as well as on the other side,
14 persons who interpret words to say that we weren't doing
15 enough. From the information I have seen with the lawsuits
16 against the corporation, generally I think on the disgruntled
17 former employers who have been filing lawsuits, that would be
18 just a floodgate, though I would agree that it would be, would
19 oppose the bill the way it is right now. On the prohibitions,
20 I would agree that if we were going to have to have, the law-
21 suits would enforce prohibition as well as require standard.
22 On the alternative is to judicial review of corporate actions.
23 It still would open floodgates because you would have things
24 going to the Court of Appeals time and time and time again,
25 again, that would open the same floodgates as would the blanket.

The own act and regulations and to enforce them.

MR. BROWN: What I would like to do, now that we

have had your statement, is to invite the members of the

Committee first to submit, make such comments, or statements of

position as would be desirable by them, I will try to keep my

mouth shut until the last one, and then invite the other mem-

bers of the board who may wish to make a comment. Then, depend-

ing on what the feelings of the membership are, we may wish

to return to hear from you again. Let me start over here, if I

may, with your statement, as the latest way from me.

MR. BAKER: I would agree in a no-win situation, this

would open the floodgates to people who wanted to enforce, and

is for not enforcing prohibition, as well as on the other side,

persons who interpret words to say that we weren't doing

enough. From the information I have seen with the lawsuits

against the corporation, generally I think on the disallowed

former employers who have been litigating, that would be

just a floodgate, though I would agree that it would be, would

oppose the bill the way it is right now. On the prohibition,

I would agree that if we were going to have the law

quite would enforce prohibition as well as require standards,

on the alternative is to judicial review of corporate actions.

It still would open floodgates because you would have things

going to the Court of Appeals time and time and time again,

again that would open the same floodgates as would the blanket

1 I think generally it would be great if we just left the whole
2 thing alone, and the minute you start saying well, on the alter-
3 native put in the -- just a flat prohibition, or just a flat
4 opposition of everything and not try to rewrite the statute of
5 the legislation as it was drafted.

6 MR. STUBBS: Ms. Worthy, do you have any comments
7 you would like to make?

8 MS. WORTHY: I had a concern with the area, I think
9 that is the last paragraph, next to the last page, when you are
10 denying clients. I guess you would say, okay, you can sue the
11 local person but then you, you know, leave the cooperation out
12 of it, there has been a lot of dissatisfaction with clients
13 getting, you know, satisfaction, even bringing any kind of
14 action. So, not having the cooperation in there to deal with
15 some of that I think is just, it's cutting us off from being
16 able to have that kind of support for bringing action. I don't
17 know why, you know, that recommendation is, you know, in there.

18 MS. WIESEMAN: Well, the regulations currently pro-
19 vide for clients to pursue their remedies through the recipients,
20 and then the corporation is required to investigate. We are
21 not proposing that the corporation shouldn't aggressively
22 enforce all of the provisions of the regulation. What 2393
23 would do, however, is permit a suit against the corporation to
24 enforce it. We don't believe that we need a suit, or the pri-
25 vate right of action to force the corporation to enforce the

I think generally it would be great if we just left the whole thing alone, and the minute you start saying well, on the other hand, but in fact -- just a total prohibition, or just a total opposition of everything and not try to restrict the scope of the regulation as it was drafted.

MS. WORTHY: Ms. Worthy, do you have any comment you would like to make?

MS. WORTHY: I had a concern with the way, I think that in the last paragraph, next to the last page, when you are saying clients, I guess you would say, okay, you can sue the local person but then you, you know, leave the cooperation out of it, there has been a lot of dissatisfaction with clients saying, you know, dissatisfaction, even bringing any kind of action, not having the cooperation in there to deal with some of that. I think in fact, it's cutting us off from being able to have that kind of support for bringing action. I don't know why, you know, that recommendation is, you know, in there.

MS. WORTHY: Well, the regulation currently provides for clients to pursue their action through the regulator and then the corporation is required to participate. We are not suggesting that the corporation shouldn't proactively enforce all of the provisions of the regulation. What we would do, however, is permit a suit against the corporation to enforce it. We don't believe that we need a suit, or the putative right of action to force the corporation to enforce the

1 act, and it's not the proper way to use the resources of the
2 corporation. We certainly do agree the corporation should
3 enforce the provisions of the act, and should investigate
4 should there be complaints, but that it's not necessary to per-
5 mit a private right of action to accomplish that end.

6 MR. STUBBS: Ms. Slaughter?

7 MS. SLAUGHTER: Yes. On the part of the alterna-
8 tives, final judiciary point of reviews, I would like a little
9 more detail on that.

10 MS. WIESEMAN: On the alternative, I am sorry --

11 MS. SLAUGHTER: The judiciary point of reviews. The
12 alternative --

13 MS. WIESEMAN: Oh, the concept of primary jurisdic-
14 tion. That is that the corporation, under the administrative
15 procedure act, which is not applicable to the corporation, but
16 is applicable generally to the federal government. An agency
17 is given primary jurisdiction to resolve complaints. That is,
18 they have the expertise, they have the resources, and hopefully
19 the courts hopefully believe that the agency will resolve it
20 so that there wouldn't be any necessity for court proceeding.
21 If, however, the resolution is not satisfactory to the person
22 making the complaint, then they have the right to appeal, not
23 initially from the complaint, but from the agency determina-
24 tion of the complaint. And, the court then reviews the agency
25 determination on the basis of what, was it arbitrary or

and it's not the proper way to use the resources of the corporation. We certainly do since the corporation should enforce the provisions of the act, and should investigate should there be complaints, but that it's not necessary to give it a private right of action to accomplish that end.

MR. STANLEY: Mr. Chairman.

MR. STANLEY: Yes. On the part of the alternative, that judicial point of review, I would like a little more detail on that.

MR. WILSON: On the alternative, I am sorry -- MR. STANLEY: the judicial point of review. The alternative --

MR. WILSON: Of the concept of primary jurisdiction, that is that the corporation, under the administrative procedure act, which is not applicable to the corporation, but is applicable generally to the federal government. An agency is given primary jurisdiction to resolve complaints. That is, they have the expertise, they have the resources, and hopefully the courts probably believe that the agency will resolve it. So that there wouldn't be any necessity for court proceedings. If, however, the resolution is not satisfactory to the person making the complaint, then they have the right to appeal, not initially from the complaint, but from the agency determination of the complaint. And the court then reviews the agency determination on the basis of what was its arbitrary or

1 capricious, was it supported by the facts, and therefore it's
2 a different standard of review. It gives the agency the, the
3 ability, first to make an initial determination, and hopefully
4 resolve the problem without intervention of the courts.

5 MR. STUBBS: Judge.

6 MR. PARAS: Mary, what was the name of the case that
7 the Senators were rebuffed on in their effort to enforce the
8 act?

9 MS. WIESEMAN: It was Grachleg (phonetic) versus,
10 Legal Services I believe.

11 MR. PARAS: And, that was on the basis of standing --

12 MS. WIESEMAN: That's right, private right of action.

13 MR. PARAS: Was the traditional taxpayer suit con-
14 cept discussed in that case at all? I read it when it came
15 out but I have forgotten, it's been so long.

16 MS. WIESEMAN: The standard they used was the Court
17 versus Ash (phonetic) standard. I think that, that in order to
18 be able to imply a private right of action there are four things
19 that you look to, and one of the things was whether Congress
20 contemplated it, whether it, whether it's necessary, or whether,
21 the statute was passed for special group, and whether they have
22 a special benefit from the statute, and the four tests under the
23 Court versus Ash. And, they determined, and it's been deter-
24 mined universally, in all the cases where the corporation has
25 been sued to enforce, or attempting to enforce the terms of

... was supported by the facts, and therefore it's a different standard of review. It gives the agency the ability, first to make an initial determination, and generally resolve the problem without intervention of the courts.

MR. STURM: Indeed.

MR. PARAS: That was the name of the case that the petitioners were reported on in their effort to enforce the

rule.

MR. WISBMAN: It was (phonetic) versus,

Local Service 1 believe.

MR. PARAS: And that was on the basis of standing.

MR. WISBMAN: That's right, private right of action.

MR. PARAS: Was the traditional taxpayer suit con-

cept dismissed in that case as well? I read it when it came

out but I have forgotten, it's been so long.

MR. WISBMAN: The standard they used was the Court

versus Ash (phonetic) standard. I think that, that in order to

be able to imply a private right of action there are four things

that you look for, and one of the things was whether Congress

contemplated it, whether it's necessary, or whether

the statute was passed for special groups, and whether they have

a special benefit from the statute, and the four tests under the

Court versus Ash. And they determined, and it's been deter-

mined unequivocally, in all the cases where the corporation has

been sued to enforce, or attempting to enforce the terms of

1 the statute, that the statute does not give, does not give,
2 does not benefit that special group. In fact, the court
3 stated, I believe it was in Grachleg, may have been another
4 case, but in one of the cases said that if anything, the
5 statute was passed to benefit poor people who need legal
6 assistance. And, there has been the case where even an elig-
7 ible client was denied standing because he said it didn't
8 come within all the other standards of, of judicial review in
9 the Ash case. So, it was not strictly a question of taxpayers,
10 but the whole, the standard was the Court versus Ash, whether
11 the statute contemplated a private right of action, whether it
12 was meant to benefit a special group, and whether the private
13 right of action would be necessary to enforce the terms of the
14 statute. And, they found in all of those that it didn't.

15 MR. PARAS: But, the Senators were there as Senators,
16 that was their claim to standing, as persons who had partici-
17 pated in the enactment of the Legal Services Act. Is that,
18 was that the basis of the Court's decision, or did that
19 decision actually indicate that even in a private capacity, or
20 in a taxpayer capacity, those Plaintiffs had no standing?

21 MS. WIESEMAN: I believe in gradually, they not only
22 went in as taxpayers, but as, as people, I mean not as tax-
23 payers, but as Senators who passed the legislation, but also
24 the people for whom the lobbying, or the lobbying was against,
25 or injured them in some way in their legislative capacities.

the statute, that the statute does not give, does not give, does not benefit that special group. In fact, the court stated, I believe it was in Grabbard, may have been another case, but in one of the cases said that it anything, the statute was passed to benefit poor people who need legal assistance. And there has been the case where even an estate this client was denied standing because he said it doesn't come within all the other standards of judicial review in the Act case. So, it was not strictly a question of taxpayers but the whole, the standard was the Court versus Act, whether the statute contemplated a private right of action, whether it was meant to benefit a special group, and whether the private right of action would be necessary to enforce the terms of the statute. And they found in all of those that it didn't.

MR. PARAS: But, the Senators were there as Senators that was their claim to standing, as person who had participated in the enactment of the legal services Act. In that was that the basis of the Court's decision, or did that decision actually indicate that even in a private capacity, or in a taxpayer capacity, those plaintiffs had no standing?

MR. WINSBROW: I believe in gradually, they not only want to be taxpayers, but as people, I mean not as taxpayers, but as Senators who passed the legislation, but also the people for whom the lobbying, or the lobbying was against, or injured them in some way in their legislative capacity.

1 They were saying they had been injured also, and that they
2 had been injured because of the scope of the lobbying. The
3 Court found that that was not sufficient.

4 And, the other cases, it's not only just legislators, as
5 I say, there is an eligible client who brought suit and the
6 Court determined that that client had no standing to bring a
7 private right of action. So, it extends, it has been extended
8 universally. The only times when the corporation has been
9 subject to suit has been in the, the appeals from defundings
10 decisions, and then there is, discrimination complaints were
11 involved. But, to enforce the act, it's been universally held
12 that neither an eligible client nor the legislators would have
13 standing.

14 MR. PARAS: So, are we left then with the decision
15 now, and with the situation in which if the Board refuses to
16 comply with the directions of the act, there is no one who
17 can bring an action of law to force compliance? Are we there?

18 MS. WIESEMAN: Yes, I think so.

19 MR. PARAS: In your opinion?

20 MS. WIESEMAN: Yes.

21 MR. PARAS: Alright, thank you.

22 MR. STUBBS: I guess I start with a more or less
23 simplistic approach. Being in a job in which, litigation in
24 which I am a Defendant is part of my daily bread, and I think
25 we have enough lawsuits already authorized without generating

1 they were saying they had been injured also, and that they
 2 had been injured because of the scope of the lobbying. The
 3 Court found that that was not sufficient.
 4 And, the other case, it's not only just hospitals, as
 5 I say, there is an eligible client who brought suit and the
 6 Court determined that that client had no standing to bring a
 7 private right of action, so, it extends, it has been extended
 8 universally. The only time when the corporation has been
 9 subject to suit has been in the, the appeals from *Goldman*
 10 decisions, and then there is discrimination complaints were
 11 involved. But, to enforce the act, it's been universally held
 12 that neither an eligible client nor the regulations would have
 13 standing.

14 MR. BARAS: So, are we told then with the decision
 15 now, and with the attention in which if the board refuses to
 16 comply with the directions of the act, there is no one who
 17 can bring an action of law to force compliance? And we thought

18 MR. WURSMAN: Yes, I think so.

19 MR. BARAS: In your opinion?

20 MR. WURSMAN: Yes.

21 MR. BARAS: All right, thank you.

22 MR. SHURE: I guess I start with a word or two
 23 about the appellate. Being in a job in which, litigation in
 24 which I am a defendant is part of my daily bread, and I think
 25 we have enough lawsuits already authorized without generalizing

1 anymore. That may be a visceral reaction rather than a
2 responsible one. The thing that troubles me I think about this
3 type of legislation as much as anything else is the fact that
4 we have just been appointed to be Board members, with an
5 implicit mandate at least to clean up the act, if you will,
6 certainly to enforce it and to behave in an aggressive, affirma-
7 tive posture to ensure that the will of the Congress is carried
8 out, both in letter and spirit. And then too, for us now to
9 take the position that we want to be curbed, strikes me as
10 being a bit inconsistent, or shying away. I certainly can
11 sympathize with the frustrations that the members of Congress
12 have felt, but I think each of us feels committed enough to go
13 forward to see that the act is carried out to relieve the fear
14 that some of them are expressing in this type of proposal.
15 Further, from my own experience, and from allowing litigation
16 for the satisfaction of the world at large, we alter very
17 significantly the funding posture of the organization against
18 which the suits are being permitted. Whether we have to go
19 into some sort of bond for good behavior on the part of the
20 attorneys in the various programs, or of each of us, or not,
21 certainly we would have to provide some sort of indemnification
22 for members, or attorneys, or program people throughout the
23 legal services structure if we were involved in good faith
24 activities to indemnify them. My own limited experience where
25 suits in a sovereign immunity state were allowed against indi-

1 any more. That may be a visceral reaction rather than a
 2 responsible one. The thing that troubles me is that about this
 3 type of legislation as much as anything else in the fact that
 4 we have just been appointed to be Board members, with an
 5 implicit mandate at least to clean up the act, if you will,
 6 certainly to enforce it and to behave in an appropriate, efficient
 7 and positive posture to ensure that the will of the Congress is carried
 8 out, both in letter and spirit. And then too, for us now to
 9 take the position that we want to be guided, either as an
 10 agent or a bit independent, or abiding way. I certainly can
 11 sympathize with the frustration that the members of Congress
 12 have felt, but I think each of us feels committed enough to go
 13 forward to see that the act is carried out to relieve the pain
 14 that some of them are expressing in this type of proposal.
 15 Further, from my own experience, and from following litigation
 16 for the satisfaction of the world at large, we after very
 17 substantially the finding posture of the organization against
 18 which the suit are being brought. Whether we have to go
 19 into some sort of bond for good behavior on the part of the
 20 attorneys in the various programs, or of each of us, or not,
 21 certainly we would have to provide some sort of indemnification
 22 for members, or attorneys, or program people throughout the
 23 legal service structure if we were favored in good faith
 24 activities to indemnify them by our limited experience where
 25 suits in a sovereign immunity state were allowed against indi-

1 viduals, have been to see the cost of legal representation
2 alone in Georgia jump from something in the magnitude of
3 \$35,000.00 to five hundred and fifty thousand dollars in the
4 span of three years. And, I can see similar types of costs
5 being super-imposed on the cost of providing legal services
6 without ever getting to the premium rates which have to be paid
7 for any sort of insurance that we might feel obliged to retain
8 to protect our people. Again, if I may use Georgia as the
9 experience, we have jumped from \$9.00 per head to \$21.00 a head
10 to provide coverage for public employees in a matter of three
11 years.

12 It seems to me that that pragmatic consideration is some-
13 thing that ought to make us very cautious about endorsing this
14 legislation. Finally, as many of you know, I spend my evenings
15 and nights with a practicing attorney who herself does legal
16 services work in a modified Judicare program. If you open up
17 liabilities of this sort to practicing attorneys over and above
18 their own errors and omissions policies we may discourage an
19 alternative which we now have in utilizing the private bar
20 either on a Pro bono (phonetic), or Judicare, or modified
21 Judicare program. And, I have to profess to a substantial
22 amount of foot-dragging about the Board's endorsement of this
23 legislation, or of this type of legislation at this time.

24 MR. PARAS: Bob, is it tolerable for a Board of this
25 sort to be totally unaccountable to the people of this country,

1 viduals, have been to see the cost of local representation
2 alone in Georgia being from something in the neighborhood of
3 \$30,000.00 to five hundred and fifty thousand dollars in the
4 span of three years. And, I can see similar types of costs
5 being super-imposed on the cost of providing local services
6 without ever getting to the premium rates which have to be paid
7 for any cost of insurance that we might have to expect to retain
8 to protect our people. Again, if I may use Georgia as the
9 experience, we have jumped from \$2.00 per head to \$31.00 a head
10 to provide coverage for public employees in a matter of three
11 years.
12 It seems to me that that preventive consideration in some
13 thing that ought to make us very cautious about endorsing this
14 legislation. Finally, as many of you know, I spend my evenings
15 and nights with a practicing attorney who himself does legal
16 services work in a modified judicial system. If you open up
17 the number of this sort of franchised territory over and above
18 their own errors and omissions policies we may discover an
19 alternative which we now have in utilizing the private bar
20 either on a pro bono (pro bono), or judicial, or judicial
21 judge program. And, I have no preference to a substantial
22 number of local judges about the local's endorsement of this
23 legislation, or of this type of legislation at this time.
24 Mr. WARD: It is desirable for a board of this
25 sort to be totally unaccountable to the people of this country.

1 or what it does, or fails to do?

2 MR. STUBBS: I think we are accountable, perhaps in
3 a different way. First of all, I think the ongoing long-range
4 notion of accountability is involved in this confirmation
5 process, however distasteful it's been to most of us for the
6 last several months. But, I think more specifically we were
7 subject to further congressional legislation restricting the
8 powers of the Board, certainly funding. I believe there is a
9 measure of accountability there that doesn't have to be brought
10 in the form of litigation. I don't know whether it's because
11 you have been a Judge that you want the Courts to hear things
12 or not, but I would prefer that, that restraints on the Board
13 for its failure to do its duty come from the Legislature rather
14 than the Courts.

15 MR. PARAS: But, the Legislature is powerless also,
16 having created us in effect they have created a monster during
17 our term of office. What can they do? They passed a law that
18 says thou shalt not do such and such and we ignore it. When
19 that happens where are we? And where are the people?

20 MR. STUBBS: I don't think we have ignored it, and I
21 confess to personalizing my feelings about it. I would like
22 us to have the opportunity to show the Congress that we are
23 going to do what the Congress intended that we do, and if we
24 don't do that then come forward with this rather than pass this
25 type of legislation at this time, and at the same time perhaps

or what it does, or why it does

MR. STUBBS: I think we are accountable, perhaps in

a different way. First of all, I think the ongoing long-range

notion of accountability is involved in this question

process, however distasteful it's been to most of us for the

last several months. But, I think more specifically we were

subject to further congressional legislation restricting the

powers of the board, certainly funding. I believe there is a

question of accountability there that doesn't have to do with

in the form of litigation. I don't know whether it's because

you have been a judge but you want the Courts to hear things

or not, but I would prefer that, that constraints on the board

for the failure to do its duty come from the legislature rather

than the Courts.

MR. STUBBS: But, the legislature is powerful also,

having created an in effect they have created a monitor during

our term of office. What can they do? they passed a law that

says that shall not do such and such and we ignore it. When

that happens where are we? And where are the people?

MR. STUBBS: I don't think we have ignored it, and I

confess to personalizing my feelings about it. I would like

us to have the opportunity to show the Congress that we are

going to do what the Congress intended that we do, and it will

not do this then come forward with this matter than pass this

type of legislation to this track, and in the same time perhaps

1 even be holding our confirmations in sort of a limbo. Let us
2 show that we can't manage without this sort of direction before
3 we go forward.

4 I think, as President Caplan has just indicated, the
5 Board's consideration at the Indianapolis meeting is indicative
6 of our desire, and purpose, to go forward and provide structure
7 within the corporation itself to insure compliance. Even with
8 that, however, I think your comment is legitimate that there
9 would be no ultimate cause of action against the Board.

10 MR. PARAS: Well, don't misunderstand, I am not
11 interested in a treble-damage clause and an invitation to
12 everybody in the United States to file a suit against us, but
13 some accountability I think is in order, and you may have just
14 touched on it right there.

15 MR. MCKEE: Mr. Chairman. It seems the difference
16 there is Mr. Paras is thinking of not just this Board but all
17 the Boards in the future. Maybe Board One does a good job and
18 unfortunately Board Two doesn't. One point of view that not
19 enough was being done to enforce, down the line another Board
20 may come along and another group of Senators may think not
21 enough is being done from their point of view, so I can see
22 both points. But, it seems that this Inspector General concept,
23 as Congressman Steiger (phonetic) was saying, that there are
24 adequate prohibitions and safeguards in 3480, and if everything
25 is enforced, I think there is probably no need for the 2393

even be holding our ventilators in sort of a limbo. Let us
show that we can't manage without this sort of direction before
we go forward.

I think, as President Kaplan has just indicated, the
board's consideration of the Indianapolis move and its relative
of our desire, and purpose, to go forward and provide financing
within the corporation itself to insure completion. Even with
that, however, I think your comment in testimony that there
would be no ultimate cause of action against the Board.

MR. PEARL: Well, don't understand me. I am not
intending in a trade change clause and an invitation to
everybody in the United States to file a suit against us, and
some accountability. I think it is in order, and you may have just
commented on its right there.

MR. WELLS: Mr. Chairman, it seems the distinction
there is not, it seems to me, in thinking of not just this Board but all
the Boards in the future. Maybe Board One does a good job and
unfortunately Board Two doesn't. One point of view that not
enough was being done to correct, down the line another Board
may come along and another group of Senators may think not
enough is being done from that point of view, so I am not
quite certain, but it seems that this particular Board concept
as Congress (perhaps) was saying, that there was
a separate prohibition and perhaps in 1930, and it was probably
in order, I think there is probably no need for the 1933

1 concept.

2 MR. STUBBS: Josephine, do you have any comments?

3 MS. WORTHY: No, I just agree with what Clarence has
4 said, I don't think that there is a need for the 2393.

5 MR. STUBBS: Mr. Earl?

6 MR. EARL: Mr. Chairman, I agree with much of what
7 was said. I think that if this is enacted in its present form
8 this whole program is going to be wallowing in a sea of liti-
9 gation. Every time a president wants to terminate an employee,
10 every time a program files a lawsuit they are going to be under
11 this provision. Anytime the corporation takes any action, any
12 time a local program takes any action there is going to be
13 litigation. We are dealing with a lot of litigious people any-
14 way, and I think you are going to find yourself totally
15 ineffective, and the program impaired, if not destroyed. I
16 think the dangers far outweigh any benefits. There are, as Mr.
17 McKee alluded to, there are more effective ways, I think, and
18 safer ways, to police some of the abuses that we now have,
19 whether that is other legislation, or some regulations from us,
20 but this is overly broad, it's dangerous.

21 MR. STUBBS: I would like to just footnote what you
22 said, that in the Attorney General's office one of our responsi-
23 bilities is to provide legal advice and assistance to depart-
24 ment heads. I have found that I am a co-conspirator with that
25 department head in litigation for having provided him with legal

concept.

MR. STUBBS: Following, do you have any comments?

MR. WORTON: No, I just agree with what Chairman has

said. I don't think there is a need for the SRS.

MR. STUBBS: Mr. Worton,

Chairman, I agree with much of what

you said. I think that it is needed in its present form

and that the program is going to be following in a way of this

direction. Every time a president wants to terminate an employee

every time a program like a lawsuit they are going to be under

this provision. Anything the corporation takes any action, any

time a local program takes any action there is going to be

litigation. We are dealing with a lot of litigious people in

ways, and I think you are going to find yourself totally

ineffective, and the program instead, it not destroyed. I

think the danger far outweighs any benefits. There are, as the

stake stands for, there are more effective ways, I think, and

after ways, to police some of the abuses that we now have,

whether that is either legislation, or some regulations, from an

but this is overly costly, it's dangerous.

MR. STUBBS: I would like to just conclude what you

said, that in the Attorney General's office one of our reports

discussed in to provide legal advice and assistance to depart-

ment in that I have found that I am a co-conspirator with that

department head in litigation for having provided him with legal

1 advice. I suggest that the nature of our society is litigious
2 at its base, and anything that would encourage that is likely
3 to bring it forward. Mr. Dana?

4 MR. DANA: Mr. Chairman, I think all of us are
5 sympathetic to the frustration that brought on, that brought
6 on much of this, much of these bills, 2393 and 3480. Really a
7 response to a sense that the Board has not carried out its
8 function in the past. And, I agree with the statements of
9 everyone here that we would like a chance to rectify that, and
10 we are doing that, and I think it would be, for all the reasons
11 indicated, a mistake to pass this bill at this time. I think
12 that many of the provisions of 3480, and 2393, are warnings to
13 us and to our recipients, that we'd better tighten up the
14 ship, and that is what we are doing. And, I hope that the
15 Congress gives us the opportunity to do that rather than express
16 their frustration with us through this bill, or cutting our
17 funding or anything of this sort. I am troubled on the speci-
18 fics by all of the things that have been indicated, I am also
19 bothered by the tendency to confuse us with our recipients.
20 The bill authorizes a suit against us, and damages, presumably
21 against us, for acts that we, of contractees and recipients.
22 If there was ever to be a sanction that might have some force
23 and effect it should be a suit against a recipient for violating
24 the act, and punishment of the recipient. The tendency of the
25 statutes and proposals to make us pay a judgment that should

1 advised. I suggest that the nature of our society in litigation
2 at its base, and anything that would encourage that in litigation
3 to being it forward. Mr. Davis?

4 MR. DAVIS: Mr. Chairman, I think all of us are

5 experienced to the transaction that brought on that brought

6 on much of this, many of these bills, 2881 and 2880. Really a

7 response to a sense that the word has not carried out the

8 function in the past. And I agree with the statement of

9 everyone here that we would like a change to reality that, and

10 we are doing that, and I think it would be, for all the reasons

11 indicated, a mistake to pass this bill at this time. I think

12 that many of the provisions of 2880, and 2881, are wanted to

13 as and to our recipients, that would better fit the

14 and, and that is what we are doing. And I hope that the

15 Congress gives us the opportunity to do that rather than exposing

16 their frustration with us through this bill or getting our

17 funding or anything of this sort. I am troubled on the spot-

18 that by all of the things that have been indicated, I am also

19 bothered by the tendency to confuse us with our recipients.

20 The bill authorizes a suit against us, and a number, presumably

21 against us, for what that we, of ourselves and recipients.

22 If there was ever to be a sanction that might have some force

23 and effect it should be a suit against a recipient for violating

24 the act, and punishment of the recipient. The tendency of the

25 legislator and proposals to vote on a bill that should

1 properly belong to a separate corporation operating in one of
2 the 50 states is, I think the wrong way to correct the problem.

3 I am opposed to 2393 and I would hope that your Committee
4 would authorize the Board to authorize the president to work
5 with Congress to assure the seven distinguished Senators, that
6 we have the problem in hand and are working on ways to solve
7 it rather than turn the problem over to the courts.

8 MR. STUBBS: You have indicated one point too, that
9 I think has already been pretty well the subject of a lot of
10 litigation in the Title 42 Civil Rights Actions, and that is
11 the question of liability where it's clearly respondents. It
12 would seem that any such litigation would itself generate
13 other litigation to construe the extent of liability. Other-
14 wise there is an imposition of liability without fault on the
15 part of the members of the corporation.

16 We have heard from each of the members, and before I come
17 back to the members of the Board, before I come back to the
18 Committee I would like to have any further comments that Mary
19 would like to make and then to have perhaps statements from the
20 staff through the president before we entertain any resolution,
21 or any other expression of interest, or comments from the
22 Board. Mary, do you have anything further you would like to
23 offer?

24 MS. WIESEMAN: I have nothing further.

25 MR. STUBBS: Mr. President?

to really belong to a separate corporation operating in one of
 the 50 states is, I think the wrong way to correct the problem.
 I am opposed to S 197 and I would hope that your Committee
 would authorize the bill to authorize the procedure to work
 with Congress to assure the seven distinguished gentlemen that
 we have the problem in hand and are working on ways to solve
 it rather than turn the problem over to the courts.

MR. STUBBS: You have indicated one point too, that
 I think has already been pretty well the subject of a lot of
 litigation in the 48 States Civil Rights Actions, and that is
 the question of liability where it's already established. It
 would seem that any such litigation would itself generate
 other litigation to contest the extent of liability. Other-
 wise there is an imposition of liability without fault on the
 part of the members of the corporation.

We have heard from each of the members, and before I come
 back to the members of the board, before I go back to the
 Committee I would like to have any further comments that they
 would like to make and then to have perhaps statements from the
 staff through the president before we entertain any resolution
 or any other expression of interest or comment from the
 board. May I do you have anything further you would like to

offer?

MR. WINTERMAN: I have nothing further.

MR. STUBBS: All - President.

1 MR. KAPLAN: No.

2 MR. STUBBS: I think we have heard a range of com-
3 ments from the members of the Committee and the Board members
4 which suggest a substantial sympathy with the Congress for its
5 frustration and a recognition that there is no way in which
6 the Board can be appropriately disciplined judiciously for
7 failure to carry out the act. And, I think we have heard an
8 expression from most of the members, however, with some
9 reservations at this time at least, of restrictive legislation.
10 I don't question for a minute that it is our obligation to,
11 either through the Board members themselves or through the
12 staff, of conveying to the Senators, and to the Congress in
13 general, not only are we willing to abide by the law, but we
14 have a very positive commitment to carry it out and do it in
15 an aggressive and affirmative way.

16 If it's appropriate, and I suggest that it may be, I
17 would like to hear a resolution as to the position of the
18 Board members on the Regulations Committee. Does anyone care
19 to submit such a resolution as to the position we ought to take
20 in recommendations to the Board in order that we can take a
21 vote?

22 MR. PARAS: Well, Mr. Chairman, in the absence of
23 anyone else speaking, I would submit that we should go on
24 record, if we are going to vote formally on this, as opposing
25 2393, but only because of its over-broad scope and depth. And,

MR. KAPLAN: No.

MR. SPURR: I think we have heard a range of comments from the members of the Committee and the board members which suggest a substantial sympathy with the Congress for the legislation and a recognition that there is no way in which the board can be appropriately disciplined judiciously for failure to carry out the act. And I think we have heard an explanation from most of the members, however, with some reservations at this time as to the nature of restrictive legislation. I don't question for a minute that it is an obligation for other through the board members themselves or through the staff of conveying to the Senators, and to the Congress in general, not only are we willing to abide by the law, but we have a very positive commitment to carry it out and do it in an aggressive and efficient way.

It is appropriate, and I suggest that it may be, I would like to hear a resolution as to the position of the board members on the Regulatory Commission. I don't know how to submit such a resolution as to the position we could take on recommendations to the board in order that we can take a

voice

MR. BARRETT: Well, Mr. Chairman, in the absence of

anyone else speaking, I would submit that we should go on record, if we are going to vote formally on this, as opposing S. 292, but only because of the over broad scope and depth. And

1 suggesting at the same time that some accountability is in
2 order, and a careful redraft of 2393 might produce a type of
3 accountability with which we could agree, but, in its present
4 form --

5 MR. STUBBS: Could I restructure your motion, that
6 we oppose the bill now, but give instructions to the chairman,
7 and to the president and the staff, in representation to the
8 Congress that they do these other things?

9 MR. PARAS: That is essentially what I had in mind,
10 how formally that should be stated, I don't know.

11 MR. STUBBS: One of the things that we have insured
12 is that we have a reporter so that we have an accurate tran-
13 script, and we can thus go to the Board with an accurate
14 reflection of our own views so that the chairman and the presi-
15 dent cannot have to speculate as to what we may have had in
16 mind. Members of the Committee, you have heard the resolution
17 proposed by Judge Paras, all in favor please signify by voting
18 aye.

19 (Aye.)

20 MR. STUBBS: I think we would go on record then as
21 recommending to the Board that S2393, in its present form, be
22 opposed, but that the chairman and the president work to bring
23 to the members who have proposed this legislation, assurances
24 that we will move aggressively to carry out the letter and
25 spirit of the act, and their suggestion, or even at our

suggested at the same time that some accountability is in order, and a general report of 1933 might produce a type of accountability with which we could agree, but in the present form

MR. WATSON: Could I rephrase your motion, that we oppose the bill now, but give instructions to the chairman and to the president and the staff, in representation to the Congress that they do these other things

MR. WATSON: That is essentially what I had in mind, how formally that should be stated, I don't know.

MR. WATSON: One of the things that we have feared is that we have a reporter so that we have an accurate transcript, and we can thus go to the Board with an accurate

reflection of our own views so that the chairman and the president cannot have to speculate as to what we may have had in mind. Members of the committee, you have heard the resolution proposed by Judge Bates, all in favor please signify by voting

(Vote)

MR. WATSON: I think we would go on record then as recommending to the Board that 1933, in the present form, be opposed, but that the chairman and the president work to bring to the members who have proposed this legislation, assurance that we will move aggressively to carry out the letter and spirit of the act, and their suggestion, or even at our

1 suggestion, that we work with them to insure that the sense of
2 their unhappiness is manifested in legislation with which we
3 can be more comfortable.

4 MR. McKEE: Mr. Chairman, in discussing our recommen-
5 dation to the Board, it should be pointed out in certain words
6 that although we understand the concerns of the Senate and the
7 Congress in enacting, or trying to enact S2393, that we uphold
8 it in its present form, and we recommend that the Committee,
9 or the Board, just stay back. I think there is enough of a
10 hint when you say in its present form that there is some
11 avenues that could be opted because what can happen sometimes
12 is once the Board or the president starts making suggestions
13 we will get 10 more bills coming in on each one of the sugges-
14 tions or alternatives. So, I think we can just indicate that
15 we understand the concerns of the Senate and we think that it's
16 not needed in this present form.

17 MR. STUBBS: Hopefully we will have a copy of the
18 transcript available for the Board at its meeting so that each
19 member who is not here present having heard what we have had
20 to say, will have access to that so that we can act formally
21 and reflect the sense of this group.

22 The next item on the agenda is the Moorhead Amendment.
23 And, as I indicated earlier, my plan of proceeding on this
24 would be to ask General Counsel to give us a statement of the
25 problem, to hear from members of the Committee, members of the

suggestion, that we work with them to insure that the sense of their unhappiness is manifested in legislation with which we can be more comfortable.

MR. TOLSON: Mr. Chairman, in discussing our recommendation to the board, it should be pointed out in certain words that although we understand the concerns of the board and the Congress in enacting or trying to enact S.S.P., that we uphold it in the present form, and we recommend that the Committee, or the board, just stay back. I think there is enough of a

thing when you say in the present form that there is some evidence that could be opted because with our action something is done the board or the president would make suggestions we will get 10 more bills coming in on each one of the suggestions or alternatives. So, I think we can just indicate that we understand the concerns of the Senate and we think that it is not needed in this present form.

MR. STUBBS: Hopefully we will have a copy of the transcript available for the board at the meeting so that each member who is not here present having board what we have had to say, will have access to that so that we can act formally and reflect the sense of this group.

The next item on the agenda is the Monday Amendment. And as I indicated earlier, my plan of proceeding on this would be to ask General Counsel to give an a statement of the problem to hear from members of the Committee, members of the

1 Board and other members of the staff, and then to invite com-
2 ments from the audience that might be helpful to us in reaching
3 the resolution on this agenda item. Mr. Veney, do you have a
4 comment at this time?

5 MR. VENEY: Just before you leave 2393, could I just
6 make an observation? That observation is the only reason I
7 can think of for the passage of 2393 is to give an eligible
8 client, who might be denied service from the program, standing
9 to sue. The staff recommendation I certainly agree with in
10 terms of opposing 2393, but I certainly can't agree with the
11 staff's recommendation that the only group that should be ex-
12 cluded from the right to sue, should be the client communities.
13 I would hope that that signal is not the signal that you hope
14 to send either to the Congress or to the client community.

15 MR. STUBBS: I appreciate your comments, and I know
16 that others may share your views, and I know you all are
17 capable of letting the Congress know how you feel. While we
18 were in our discussion on 2393 two other of our hosts yester-
19 day came in and I would like to recognize their presence and
20 thank them for being here. Mike Connely, who is the director
21 of the Northeastern Minnesota Legal Services Program, and one
22 of his Board members, Claudia Maken (phonetic) was it, we are
23 very pleased to have you all with us.

24 Let's go on now to the item of the Moorhead Amendment.
25 Would you give us a statement of the problem, please, and the

Board and other members of the staff, and then to invite com-
ments from the audience that might be helpful to us in reaching
the resolution on this agenda item. Mr. Voney, do you have a
comment at this time?

MR. VONEY: Just before you leave 232, could I just
make an observation? That observation is the only reason I
can think of for the passage of 232 is to give an outside
entity, who might be denied service from the program, standing
to sue. The staff recommendation I certainly agree with in
favor of opening 232, but I certainly can't agree with the
staff's recommendation that the only group that should be ex-
cluded from the right to sue should be the client committee.
I would hope that that staff is not the signal that you hope
to send other to the Congress or to the client community.

MR. STUBBS: I appreciate your comments, and I know
that others may share your views, and I know you all are
capable of letting the Congress know how you feel. While we
were in our discussion on 232 two other of our hosts yester-
day came in and I would like to recognize their presence and
thank them for being here. Mike Connelly, who is the director
of the Northwestern Minnesota Rural Services Program, and one
of his board members, Claudia Maken (phonetic) was in, we are
very pleased to have you all with us.

Let's go on now to the item of the Board Amendment.
Would you give us a statement of the program, please, and the

1 suggestion that we have in our working papers for the regula-
2 tion change, at least to initiate the discussion.

3 MS. WIESEMAN: Yes. I neglected to introduce, I
4 believe you did before, Michael Glomb from the office of
5 General Counsel who has done the background paper on lobbying
6 in the Moorhead Amendment, which is in the materials. The
7 Moorhead Amendment was added to the corporation's appropriation
8 legislation in 1979. It provides, provided no part of this
9 appropriation shall be used for publicity or propoganda pur-
10 poses designed to support or defeat legislation pending before
11 Congress or any State Legislature. The previous General
12 Counsel's opinion on this subject included that the Moorhead
13 Amendment had no substantive effect on the scope of permissible
14 lobbying activities contained in the authorizing legislation.

15 The regulation which we have proposed to the Board, and is
16 included within your materials, would have effectively revoked
17 that opinion of the General Counsel's office and significantly
18 narrowed the permissible lobbying activities of grantees by
19 specifically recognizing the binding prohibition on the use of
20 funds for Grass Roots lobbying. In addition it will address
21 many of the concerns raised in Congress about lobbying activi-
22 ties of legal services programs, as well as the criticisms of
23 the Comptroller General has made about the program, the cor-
24 poration regulations of program lobbying activities. The pro-
25 posed regulation adopts the GAO definition of the anti-lobbying

suggestion that we have in our working papers for the regula-
tion groups, as found in *Initials the discussion*.
MS. WILSON. Yes, I referred to it before, I
believe you did before, Michael Glubb from the office of
General Council who has done the background paper on lobbying
in the Scotland Amendment, which is in the materials. *the*
Scotland Amendment was added to the corporation's registration
regulation in 1997. It provides, provided as part of this
regulation shall be used for publicity or propaganda pur-
poses designed to support or defeat legislation pending before
Congress or any State legislature. The previous Govern-
ment's opinion on this subject included that the Scotland
Amendment had no substantive effect on the scope of permissible
lobbying activities contained in the existing regulation.
The regulation which we have proposed to the board, and in-
cluded with your materials, would have effectively removed
that opinion of the General Council's office and significantly
narrowed the permissible lobbying activities of persons by
effectively recognizing the binding prohibition on the use of
funds for doing State lobbying. In addition it will address
many of the concerns raised in Congress about lobbying activi-
ties of legal services programs, as well as the inclusion of
the Computer Council has made about the program. The con-
stitutionality of program lobbying activities. The pro-
posed regulation covers the two definitions of the anti-lobbying

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1 provisions contained in Sections 607A of the Treasury Postal
2 Service and General Government Appropriations Act. Section
3 607A, and Moorhead, are essentially identical, except that
4 Moorhead contains, at prohibition, both for federal and state
5 lobbying, whereas 607 does not include state lobbying activi-
6 ties.

7 The GAO interpretation, and the regulation which is pro-
8 posed, is through the Moorhead Amendment to prohibit the ex-
9 penditure of legal services funds for Grass Roots lobbying, and
10 that is appeals directed to the public at large, or selected
11 individuals, suggesting that they contact their elected
12 representatives and indicate their support for, or opposition
13 to pending legislation. We believe that the restriction on
14 lobbying imposed by the Moorhead Amendment is an issue that
15 can, and should be treated separately from the larger issue of
16 legislative representation otherwise permitted under the
17 statute for two reasons. First, because there is a need to
18 proceed expeditiously in implementing the mandate of Moorhead,
19 and second, because any revision of the current lobbying regu-
20 lations involves a much broader inquiry. And, included in
21 that, obviously, is the impact of HR3480, should it pass, will
22 have a significant impact on the scope of permissible lobbying
23 on this statute.

24 We represented an analysis of the issues involved in the
25 inquiry concerning lobbying, the permissible lobbying under

provisions contained in Section 60VA of the Energy Code
 Review and General Government Appropriation Act. Section
 60VA and 60VB are essentially identical, except that
 60VB contains a prohibition, both for Federal and State
 lobbying, whereas 60VA does not include state lobbying activities.
 The two interpretations and the restriction which is proposed
 is through the proposed Amendment to prohibit the
 prohibition of local services funds for State lobbying and
 that is applied directed to the public at large, or selected
 individuals, suggesting that they contact their elected
 representatives and indicate their support for, or opposition
 to pending legislation. We believe that the restriction on
 lobbying imposed by the proposed Amendment is in some way
 and should be treated separately from the larger issue of
 legislative representation otherwise permitted under the
 statute for two reasons. First, because there is a need to
 proceed expeditiously in implementing the mandate of 60VB
 and second, because any restriction of the current lobbying
 statute involves a much broader inquiry. As stated in
 that, obviously, in the impact of H.R. 800, should it pass, will
 have a significant impact on the scope of permissible lobbying
 on this statute.
 We represented in analysis of the issues involved in the
 inquiry concerning lobbying, the general lobbying under

1 the statute, in the June 9th memorandum which is in your
2 materials. Further development of proposed regulations along
3 the lines suggested in that paper, for example, documentation
4 requirements is one of the items we suggested, would require
5 further direction from the Board. We have, in the proposed
6 regulation, limited our inquiry to Moorhead, and to regulating
7 the Grass Roots lobbying, and the regulation does go strictly
8 to that, to that item.

9 MR. MCKEE: Mr. Chairman. You mentioned regulation,
10 is this to be a proposed instruction or regulation?

11 MS. WIESEMAN: Initially when the initial staff work
12 was done, we had proposed in our paper, the General Counsel's
13 paper, that it could be done by instruction. And, the reason
14 for that suggestion was that Moorhead is an appropriations
15 rider, and that with 3480 possibly being passed, that an instruc-
16 tion would be quicker, it required publication, but not a
17 comment. However, after having input from the Board at the
18 Indianapolis meeting, and further discussion about it within
19 the staff and through the Board, it was determined that the
20 regulation of Moorhead was, was, or regulation was needed to
21 implement Moorhead one, to permit the comment, and two, because
22 it's pretty clear that Moorhead has been in our appropriation
23 since 1979, and it's probably going to be in our appropriation,
24 that it will not be something that will end quickly and that
25 the regulation process was a more careful way and permitted

1 the matter, in the June 25th memorandum which is in your
 2 materials. Further development of proposed regulations along
 3 the lines suggested in that paper, for example, documentation
 4 requirements as one of the items we suggested, would require
 5 further discussion from the Board. We have, in the proposed
 6 regulation, limited our input to Moobhead, and to regulating
 7 the Glass-Steagall lobby, and the regulation does go strictly
 8 to that, in that form.

9 Mr. Boardman, you mentioned regulation
 10 in this to be a proposed regulation or regulation.

11 Mr. Boardman, initially when the initial staff work
 12 was done, we had proposed in our paper, the general concept
 13 paper, that it could be done by that staff. And the reason
 14 for that suggestion was that Moobhead is an organization

15 which, and that with MBB possibly being passed, that an institution
 16 that would be subject, if required publication, but not a

17 comment, however, after having input from the Board as the
 18 organization in meeting, and further discussion about it within
 19 the staff and through the Board, it was determined that the
 20 regulation of Moobhead was, or regulation was needed to

21 implement the Board's, to permit the comment, and two, because
 22 it is pretty clear that Moobhead has been in our organization
 23 since 1967, and it's probably going to be in our organization
 24 that it will not be something that will end abruptly and that

25 the regulation process was a more general way and permitted

1 public comment on the proposed regulation.

2 MR. MCKEE: This would be effective thirty days after
3 publication?

4 MS. WIESEMAN: No, there is a thirty day comment
5 period, for public comment, then it's reviewed again in light
6 of that public comment. The Board may or may not wish to make
7 changes after receiving public comment, and then it's published
8 again for, there could be another change and there could be
9 another comment, or it could be published finally at that
10 point. What we are proposing today is that if your Committee
11 sees fit, that it pass a resolution to present it to the Board
12 for the Board's determination of whether it should be pub-
13 lished in the Federal Register for comment as proposed regula-
14 tion.

15 MR. STUBBS: Do you have any other questions?

16 MR. MCKEE: Yes. 16124E, correct?

17 MS. WIESEMAN: Yes.

18 MR. MCKEE: For the purposes of this regulation, an
19 "appeal" is any written or oral communication which contained
20 the direct or implied suggestion to contact, the word implied --
21 Let's say I have a newsletter and I don't tell the public to
22 go to see Congressman so-and-so because that would be a direct
23 appeal, all I say is, what if I just want to say that XYZ
24 amendment is in to Congress and this will have the following
25 impact, etc. Just an objective statement of what the facts

public comment on the proposed regulation.

MR. ROBERTS: This would be effective thirty days after

publication.

MR. WILKINSON: There is a thirty-day comment

period, for public comment, then it's reviewed again in light

of that public comment. The Board may or may not wish to make

changes after receiving public comment, and then it's published

again. There could be another change and there could be

another comment, or it could be published finally at that

point. What we are proposing today is that if your Committee

feels that it has a resolution to present to the Board

for the Board's determination of whether it should be pub-

lished in the Federal Register for comment on proposed regula-

tions.

MR. ROBERTS: Do you have any other questions?

MR. WILKINSON: Yes, I do, but not now.

MR. WILKINSON: Yes.

MR. ROBERTS: For the purpose of this regulation, an

"request" is any written or oral communication which contains

the word or implied suggestion to control, the word "control"

is not used. I have a newsletter and I don't tell the public to

go to see Congressman so-and-so because that would be a direct

appeal, all I say is, what if I just want to say that XYZ

members in the Congress and this will have the following

impact, etc. Just an objective statement of what the facts

1 are, wouldn't somebody take that, say that, anything could be
2 considered to be an implied appeal, couldn't it?

3 MS. WIESEMAN: I would say that your example would
4 not come within this regulation as prohibition. However, what
5 we are trying to get at with using the word implied is that if
6 you leave out the phrase, write your Congressman, but you have
7 everything else in there, and urging people, and the content
8 urges people to do that, that that shouldn't be able to be,
9 that shouldn't be permissible merely because you leave out the
10 magic words, and that is why the implied is in there, it gives
11 the right to interpret what the meaning, the entire meaning of
12 a communication is intended to do. It's a difficult standard
13 and we have discussed this very, at great length, in our office
14 in trying to come to some solution that will not be a paper
15 tiger, that will just permit someone to leave out a phrase and
16 be alright. At the same time, not prohibiting things that do
17 not come within the Moorhead prohibition, and that is why the
18 implied is in there and that is why we defined appeal. We are
19 defining it so that it can be reasonably interpreted we think.

20 MR. MCKEE: My last point is, you mentioned, what
21 were you going to pursue with Max Miller about, this would
22 apply to all grantees, is that right?

23 MS. WIESEMAN: That's correct.

24 MR. MCKEE: You say in this memo -- the subsequent
25 memorandum you were going to do, what was going to be the

1 any wouldn't somebody take that, say that, anything could be
2 considered to be an unjust appeal, couldn't it?
3 MR. WILLIAMS: I would say that your example would

4 not come within this regulation as prohibition. However, what
5 we are trying to get at with using the word *implied* is that if
6 you leave out the phrase, write your condemnation, but you have
7 everything else in there, and using people and the content

8 need people to do that, that that shouldn't be able to do,
9 that shouldn't be punishable merely because you have one of
10 those words, and that is why the *implied* is in there, it gives
11 the right to interpret what the meaning, the entire meaning of
12 a communication is intended to do, that's a different standard

13 and we have discussed this very, at great length, in our office
14 in trying to come to some solution that will not be a paper
15 tiger, that will just punish someone to have one phrase and
16 be alright, at the same time, not prohibiting things that do
17 not come within the wording prohibition, and that is why the

18 *implied* is in there and that is why we defined *implied*. We are
19 defining it so that it can be reasonably interpreted we think
20 MR. MOHR: My last point is, you mentioned what

21 were you going to pursue with Max Miller about this would
22 apply to all persons, is that right?

23 MR. WILLIAMS: That's correct.

24 MR. MOHR: You say in this case - the subpoena

25 memorandum you were going to do, what was going to be the

1 nature of your discussion with Miller in terms of this subject?

2 MS. WIESEMAN: We have commenced, and had a discus-
3 sion with Max Miller, he has proposed, made some proposals to
4 us, we are in the process of sending them out to support
5 centers for comment by them. His proposal was, in fact, to our
6 office, was another panel to, to review, appointed by the
7 Board to review these kinds of publications, and he was
8 particularly directing his attention to support centers. So,
9 our, in responding to that, and in talking with him, we are
10 sending that out to the support centers to get their comments
11 on them, and at that point we will have more data from them,
12 we will have his provision, and again, that goes to the whole
13 area of lobbying altogether. But, we didn't think we needed
14 to hold up this provision for that process.

15 MS. WORTHY: I noticed that, I just wanted to ask
16 why, specifically, Max Miller is doing all of this, because of
17 the comments that he brought to our Committee, or have you just,
18 you know, hired him to do this kind of thing? I just --

19 MR. MCKEE: I can answer that. When Max testified,
20 our first meeting of the Committee on Grants and Contracts, one
21 of the subjects was support centers, and Mr. Miller from the
22 Mountain States Legal Foundation had several ideas of concern
23 about support centers, and he particularly keyed in on the
24 lobbying aspect. What he has done is to follow through --

25 MS. WORTHY: Okay, that is fine, I was just wondering,

1 nature of your discussion with Miller in terms of this subject
 2 MR. WILSON: We have commented, and had a discus-
 3 sion with Max Miller, he has proposed, with some proposals to
 4 us, we are in the process of sending them out to support
 5 centers for comment by them. The proposal was, in fact, to our
 6 effect, was another panel to be reviewed, suggested by the
 7 board to review these kinds of publications, and he was
 8 particularly interested in the relation to support centers. So,
 9 out, in responding to that, and in talking with them, we are
 10 sending them out to the support centers to get their comments
 11 on them, and at that point we will have more data from them,
 12 we will have his provision, and again, that goes to the whole
 13 area of lobbying activities, but, we didn't think we needed
 14 to hold up this provision for that program.

15 MS. WORTHY: I noticed that, I just wanted to ask
 16 why, specifically, was Miller in going all of this, because of
 17 the committee that he brought to our Committee, or have you just
 18 you know, tried him to do this kind of thing? I just --

19 MR. MCKEE: I can answer that. When Max first tried,
 20 our first meeting of the Committee on Goals and Contacts, one
 21 of the subjects was support centers, and Mr. Miller from the
 22 Mountain States Legal Foundation had several ideas of concern
 23 about support centers, and he particularly loved to on the
 24 funding aspect. What he has done is to follow through --

25 MS. WORTHY: Okay, that is fine, I was just wondering

1 you know, why Max, in sending that out to other support centers
2 is why we just pinpointed Max, because sometimes we can get a
3 very unhappy person to give us some very negative ideas and we
4 have a tendency to take that and use that to implant ideas in
5 our head. I know Max and I was just wondering, you know, if
6 it's all negative or is it something, whatever he's writing,
7 that we are going to be able to use some of it in a very posi-
8 tive way. If it was all negative it would bother me.

9 MS. WIESEMAN: What we thought, is since his criti-
10 cisms are directed primarily to the support centers, we want
11 to see what the support centers have to say in their own
12 defense with respect to what he's saying, and we thought the
13 proper way to do that, he has criticisms, we have discussed
14 them with him and asked him to put them in writing and tell us
15 examples, what he thinks should be done about it, as we would
16 with, I think, anyone that wanted to give us some suggestions.
17 Now we are getting the feel, the comment on those suggestions,
18 are they actual, do they consider the problems? They will come
19 back to us and then we will have more data to make decisions on
20 whether there is a need for a change, whether the complaints
21 actually are real, or factual, or whether it's just a percep-
22 tion of the way things occurred. So, we are really gathering
23 data and trying to get information.

24 MR. STUBBS: Jo, do you have any further comments?

25 MS. WORTHY: Not right now.

you know, why Max, in reading that out to other support centers
 in why we just pinpointed that, because sometimes we can get a
 very unhappy person to give us some very negative ideas and we
 have a tendency to take that and use that to implement ideas in
 our head. I know Max and I was just wondering, you know, if
 it's all negative or is it something, whatever he's writing,
 that we are going to be able to use some of it in a very posi-
 tive way. If it was all negative it would bother me.

MR. WORTHY: What we thought in kind of the
 items are directed primarily to the support centers, we want
 to see what the support centers have to say in their own
 defense with respect to what he's saying, and we thought the
 proper way to do that, in our criticism, we have discussed
 them with him and asked him to put them in writing and tell us
 examples, what he thinks should be done about it, as we would
 like. I think, anyone that wanted to give us some suggestions,
 how we are getting the tool, the comment or those suggestions,
 are they actual, do they consider the problem, they will come
 back to us and then we will have more data to make decisions on
 whether there is a need for a change, whether the computer
 actually are real, or factual, or whether it's just a percep-
 tion of the way things occurred. So, we are really gathering
 data and trying to get information.

MR. SUBERS: Do you have any further comments?
 MR. WORTHY: Not right now.

1 MR. PARAS: As I understand it, you just want to
2 initiate, or you are recommending that we initiate a rule which
3 implements the Moorhead Amendment, and which of course does not
4 become a rule until there has been an opportunity for comment
5 upon it. As such I am certainly in favor of it.

6 MR. STUBBS: Mary, this may not really be responses
7 to the subject, but it does address the whole question, I think
8 at least subtly, of legislative advocacy. Why doesn't our
9 working papers, or why don't our working papers cover more than
10 the narrow language of Moorhead as a subject matter, particu-
11 larly in view of the fact that 3480 is also concerned with this,
12 or is that the reason?

13 MS. WIESEMAN: That is one of the reasons, and a big
14 reason. If 3480 becomes law there will no longer be any legis-
15 lative lobbying permitted by our recipients on behalf of
16 eligible clients. The other reason, and so, the need for any
17 additional regulations, other than the statute itself, would
18 seem not to be necessary if 3480 passes. On the other hand,
19 the scope of the exceptions within our current statute, there
20 are three exceptions to the prohibition on legislative advocacy,
21 those three exceptions, and the first one probably being the
22 one that has maybe given us the most problem, is that the
23 legislation provides you may lobby on behalf of an eligible
24 client if it's necessary to legal advice or assistance. It's
25 that exception to the rule that prohibits lobbying, which is,

MR. STURGE: Well, you just want to
 initiative, or you are recommending that we initiate a rule which
 implement the proposed Amendments, and which of course does not
 become a rule until there has been an opportunity for comment
 upon it. As such I am certainly in favor of it.
 MR. STURGE: Well, this may not really be responsive
 to the subject, but it does address the whole question of
 the total ability of legislative advocacy. Why doesn't our
 working paper, or why don't our working papers cover more than
 the narrow language of proposed as a subject matter, practice
 fully in view of the fact that 3480 is also concerned with this
 or is that the reason?

MR. WISSEMAN: That is one of the reasons, and a big
 reason. If 3480 becomes law there will no longer be any legis-
 lative lobbying permitted by our constituents on behalf of
 eligible citizens. The other reason, and so, the need for any
 additional regulations, other than the statute itself, would
 seem not to be necessary if 3480 passed. On the other hand,
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 are three exceptions to the prohibition on legislative advocacy
 those three exceptions, and the first one probably being the
 one that has maybe given us the most problem, is that the
 legislation provides you may lobby on behalf of an eligible
 citizen if it's necessary to legal advice or assistance. This
 last exception to the rule that prohibits lobbying, which is

1 the corporation has done one thing in the past to try to make
2 that more clear, and that is the requirement of the retainer
3 agreements, which just went into the regulation, or that you
4 have written documentation that you are acting on behalf of an
5 eligible client, that you are not acting on your own behalf,
6 that you are not provoking lobbying on your own behalf, but you
7 are really representing an eligible client --

8 MR. STUBBS: And, that establishes eligibility as
9 well?

10 MS. WIESEMAN: Well, it has to be an eligible client
11 first. You have to be, you have to have an eligible client
12 which you cannot solicit, because the statute prohibits that,
13 the solicitation of that client, but if you have an eligible
14 client who, and his problem, or her problem involves something
15 that legislative lobbying would be necessary to the provision
16 of legal advice or assistance to that eligible client, that is
17 an exception to the prohibition of lobbying in the statute --

18 MR. STUBBS: But, in the documentation, is the
19 eligibility element also subject to inquiry? In other words,
20 does the document establish the basis of eligibility in the
21 first instance as well as the problem which justifies going to
22 the Legislature?

23 MS. WIESEMAN: I don't think in the same document.
24 The regulations do provide, however, that the grantees must
25 keep documentation of their eligibility determinations.

the corporation has done one thing in the past to try to make
 full more clear, and that is the requirement of the retention
 documents, which just went into the regulation, so that you
 have written documentation that you are acting on behalf of an
 eligible client, that you are not acting on your own behalf,
 that you are not providing lobbying on your own behalf, but you
 are really representing an eligible client --

MR. THURBERG: And, that establishment of eligibility as

well?

MR. WISBMAN: Well, it has to be an eligible client
 first. You have to be, you have to have an eligible client
 before you cannot solicit, because the statute prohibits that,
 the solicitation of that client, but if you have an eligible
 client who, and his problem, or her problem involves something
 that legislative lobbying would be necessary to the provision
 of legal advice or assistance to that eligible client, that is
 an exception to the prohibition of lobbying in the statute --

MR. THURBERG: Just in the documentation, in the
 eligibility element also subject to inquiry. In other words,
 does the document establish the basis of eligibility in the
 first instance as well as the problem which justifies going to
 the legislatures?

MR. WISBMAN: I don't think in the same document.
 The regulations do provide, however, that the grantee must
 keep documentation of their eligibility determinations.

1 MR. STUBBS: That we can look at if necessary for
2 this type of --

3 MS. WIESEMAN: Well, on the sections that we deal in
4 eligibility there is some problem with identification of clients.
5 Now, we take the position, and it has been taken in the General
6 Counsel's office before, and one of the regulations on eligi-
7 bility that we mentioned today has that, that if there is a
8 question with respect to eligibility of a client, then the
9 corporation does have the right to review the, to get the data
10 upon which the client's eligibility was determined if there was
11 a question concerning that. And, therefore, the first, with
12 respect to the lobbying, the client has to be eligible, that
13 determination of eligibility is made under a different regula-
14 tion for all clients, they have to be determined to be eligible,
15 and documentation of that eligibility must be maintained by the
16 program. And then once you have an eligible client under the
17 lobbying section of the statute, if the legislative activity
18 is necessary to the provision of legal advice or assistance --

19 MR. STUBBS: In that case?

20 MS. WIESEMAN: In that case, for that eligible client,
21 then it's permissible under the statute. And, the question is
22 trying to, we suggest in the background paper on lobbying all
23 together, that maybe we need more documentation, maybe we need
24 something more than the retainer agreement which is a simple
25 statement that so-and-so client retains you to do such-and-such.

Mr. WILBANKS: That we can look at it necessary for

of this type of

Mr. WILBANKS: Well, on the motions that we deal in

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now, we take the position, and it has been taken in the General

Council's office before, and one of the regulations on elicit

ability that we mentioned today has that that there is a

question with respect to eligibility of a client, then the

corporation does have the right to review the data and the data

upon which the client's eligibility was determined if there was

a question concerning that. And, therefore, the firm, with

respect to the lobbying, the client has to be eligible that

determination of eligibility is made under a different regula-

tion for all clients, they have to be determined to be eligible

and documentation of that eligibility must be maintained by the

program. And then once you have an eligible client under the

lobbying section of the statute, if the legislative activity

is necessary to the provision of legal advice or assistance

Mr. STUBBS: In that case?

Mr. WILBANKS: In that case, for that eligible client

then it is permissible under the statute. And, the position is

trying to, we suggest in the background paper on lobbying all

together, that maybe we need more documentation, maybe we need

something more than the retention agreement which is a simple

statement that so-and-so client retains you to do such-and-such

1 Maybe we need, we could propose additional regulations to docu-
2 ment it more clearly, more precisely, as to why it's necessary
3 to provide legislative activity.

4 MR. STUBBS: Well, it's not a retention of legal
5 services for the purpose of lobbying?

6 MS. WIESEMAN: It may be in a particular instance I
7 think. It could happen that way. You could have an ongoing
8 client, or, you could have a client that is involved in a legal
9 problem and you find that you are at a dead end somewhere, and
10 there is a statute pending, and you have already established,
11 you know, your lawyer-client relationship and you say well,
12 now we need to do legislative lobbying. That could happen.
13 Or, it could happen a different way, that a client would say,
14 there is a statute pending that is going to cut my welfare
15 benefits, you know, twenty percent, will you represent me on
16 this. Then you could, as long as you didn't solicit that
17 client, we believe that under the statute as long as that
18 client wasn't solicited by you, or by the recipient program
19 attorney, for the purposes of bringing that, that action to the
20 Legislature, starting that, then you have the right, if it's
21 necessary to the provision of legal assistance to that client,
22 to have the right under the statute, currently under the
23 exception, to take part in legislative --

24 MR. STUBBS: Doesn't that invite some sort of abuse?
25 I realize we are getting a little way from Moorhead, but doesn't

1 maybe we need, we could propose additional regulations to don-
 2 want it more clearly, more precisely, as to why it's necessary
 3 to provide legislative activity.
 4 MR. STUBBS: Well, it's not a retention of legal
 5 services for the purpose of lobbying.
 6 MR. WEISBERG: It may be in a particular instance I
 7 think it could happen that way. You would have an ongoing
 8 client, or, you could have a client that is involved in a legal
 9 problem and you find that you are in a good and someone, and
 10 there is a statute pending, and you have already established
 11 you know, your lawyer-client relationship and you say well,
 12 now we need to do legislative lobbying. That could happen.
 13 Or, it could happen a different way, that a client would say,
 14 there is a statute pending that is doing to me my welfare
 15 benefits, you know, twenty percent, will you represent me on
 16 this. Then you could, as long as you didn't solicit that
 17 client, we believe that under the statute as long as that
 18 client wasn't solicited by you, or by the recipient program
 19 attorney, for the purpose of bringing that, that action to the
 20 legislature, stating that, then you have the right, if it's
 21 necessary to the provision of legal assistance to that client,
 22 to have the right under the statute, currently under the
 23 exception to take part in legislative -
 24 MR. STUBBS: doesn't that invite some sort of abuse?
 25 I realize we are getting a little way from Moorhead, but doesn't

1 that invite some sort of abuse? Because, I can't conceive of
2 many pieces of legislation that don't affect just about any-
3 body, or anything. Certainly my own experience with our
4 general assembly is that every time they meet they open the
5 Pandora's box again, and there is legislation and legislation
6 produced, and it seems to me that we are not no longer talking
7 about a case, something for example that would withstand an
8 objection on a declaratory judgment type situation as to whether
9 or not we had a real case of controversy, but something that is
10 of interest to an eligible client. I could conceive of almost
11 any piece of legislation as having some indirect effect on most
12 clients. Doesn't that open the door to allowing legal services
13 then immediately to become just a legislative program?

14 MR. GLOMB: Mr. Stubbs, under the current regulation,
15 lobbying is permitted for an eligible client only if the
16 client will be directly affected by pending legislation.

17 MR. STUBBS: I know that is what it says, but what I
18 am concerned with is that by too broad a permissibility that we
19 get beyond that and get ourselves in the problems that we have
20 gotten into. Maybe I am opening a box myself in making inquiry
21 into something under general lobbying rather than just this act.
22 Now Dennis, did you --

23 MR. DAUGHERTY: Let me make a general observation and
24 then address that question. We are making the assumption, and
25 proposing this as regulations, that this will be part of an

1 that invite some sort of agency because I can't conceive of
 2 any piece of legislation that don't affect just about any-
 3 body or anything. Certainly my own experience with our
 4 general assembly is that every time they meet they open the
 5 Pandora's box again, and there is legislation and legislation
 6 produced, and it seems to me that we are not no longer talking
 7 about a case, something for example that would withstand an
 8 objection on a discretionary judgment type situation as to whether
 9 or not we had a real case of controversy, but something that is
 10 of interest to an eligible client. I could conceive of almost
 11 any piece of legislation as having some indirect effect on most
 12 clients. Doesn't that open the door to allowing legal services
 13 that immediately to become just a legislative program?
 14 MR. CHAIR: Mr. Starnes, under the current regulation,
 15 lobbying is permitted for an eligible client only if the
 16 client will be directly affected by pending legislation.
 17 MR. STARNES: I know that is what it says, but what I
 18 am concerned with is that by too broad a permissibility that we
 19 get beyond that and get ourselves in the position that we have
 20 gotten into. Maybe I am opening a box myself in making industry
 21 into something under general lobbying rather than just this set
 22 now doesn't did you --
 23 MR. WAHRENTHY: Let me make a general observation and
 24 then address that question. We are making the assumption, and
 25 proposing this as regulations, that this will be part of an

1 appropriation in future years. We will, when we look at our
2 discussion of 3480 this afternoon, note that last year both
3 the House and Senate appropriations bills, but not the final
4 product, the continuing resolution, imposed a more restrictive
5 standard on lobbying than our current law plus, plus Moorhead.
6 In the case of the Senate bill the language that was employed
7 was a limitation to particular claims, and I think that we have,
8 I think the question that your're raising is one that has
9 troubled a number of members of Congress as to whether or not
10 the focus here is on a particular legislative measure, or on a
11 particular legal problem of the client. Whether he had a
12 particular problem that he brought forth. And there, they, the
13 concern arises out of the fact that many of our programs have
14 centralized lobbying operations that assume that this is a
15 major ongoing part of that.

16 MR. STUBBS: Well, I think that I have been acting
17 out of order in raising something that perhaps belongs under
18 3480, so having kicked the bucket I will try to leave it alone
19 and go back to Moorhead if I may.

20 MR. DAUGHERTY: I didn't mean to suggest that --

21 MR. STUBBS: That's alright. Let me ask you though,
22 and hopefully these are more pertinent to Moorhead, Mary. The
23 Amendment talks about legislation pending before Congress, or
24 a State Legislature. Now, you read that to exclude the genera-
25 tion of proposals for legislation, and would restrict it purely

1 separation in future years. We will, when we look at our
 2 discussion of 450 this afternoon, note that that's your job.
 3 The House and Senate appropriations bills, but not the final
 4 product, the continuing resolution, impose a more restrictive
 5 standard on copying than our current law plus the House.
 6 In the case of the Senate bill, the language that was employed
 7 was a limitation to particular claims, and I think that we have
 8 a clear question that your's raising is one that has
 9 involved a number of members of Congress as to whether or not
 10 the focus here is on a particular legislative measure, or on a
 11 particular legal problem of the kind. Whether he had a
 12 particular problem that he brought forth. And there, they, the
 13 concern arises out of the fact that many of our programs have
 14 centralized lobbying operations that assume that this is a
 15 major ongoing part of that.

16 MR. STUBBS: Well, I think that I have been acting
 17 out of order in raising something that perhaps belongs under
 18 when we have kind of the budget. I will try to leave it alone
 19 and go back to working it I say.

20 MR. DAUGHERTY: I didn't mean to suggest that --
 21 MR. STUBBS: That's alright. Let me ask you though,
 22 and hopefully these are more pertinent to House, they, the
 23 Amendment talks about legislation pending before Congress, or
 24 a State legislature. Now, you read that to exclude the passage
 25 tion of proposals for legislation, and would you like it purely

1 to matters which are already on the floor of a legislative body.

2 MS. WIESEMAN: The language of, of the, we had
3 adopted the definition that the GAO had adopted for the Section
4 607, and that is the, that it's a appeal to support, or oppose
5 specific legislation that is pending. Yes, that is the defini-
6 tion --

7 MR. STUBBS: But, we would not be prohibited from
8 going forward and not restricting it just to pending legisla-
9 tion, but to the development, or stimulation if you will, of
10 legislation? It seems to me that the one reading of the
11 Moorhead Amendment may be that the Congress doesn't want itself
12 and State Legislatures bugged by legal services using public
13 money to lobby for legislation, the language says pending
14 legislation, but could it not be as broadly read for legisla-
15 tion generally, which would embrace things that are not yet
16 formally introduced in the House?

17 MR. GLOMB: That is a possibility, however, you have
18 to remember that lobbying in the first instance has to be con-
19 ducted under the act which requires that, as I indicated before,
20 that, at least for client representation, that there be an act
21 that the client may be affected by. So, perhaps as a reality
22 you are not going to have much situations where you would have
23 lobbying permissible at all under the act, let alone getting to
24 the technique of Grass Roots lobbying. In other words, you
25 can't use Grass Roots lobbying apart from the exceptions, you

to matters which are already on the floor of a legislative body.

MR. WIRTHMAN: The language of it that we had adopted the definition that the GAO had adopted for the decision 607, and that is that it's a special to support or oppose specific legislation that is pending. You, that is the definition.

MR. STURM: But, we would not be prohibited from going forward and not restricting it just to pending legislation, but to the development, or stimulation if you will, of legislation. It seems to me that the one reading of the

language would mean that the Congress doesn't want itself and State legislatures nudged by legal services using public money to lobby for legislation. The language says pending legislation, but could it not be as broadly read for legislation generally, which would embrace things that are not yet

formally introduced in the House?

MR. QUINN: That is a possibility, however, you have to remember that lobbying in the first instance has to be conducted under the act which requires that, as I indicated before that, at least for client representation, that there be an act that the client may be affected by. So, perhaps as a result you are not going to have such situations where you would have lobbying permissible at all under the act, let alone getting to the technique of Grass Roots lobbying. In other words, you can't use Grass Roots lobbying apart from the exception, you

1 can't use Grass Roots lobbying anyway, but you can't lobby at
2 all unless they fall in the exception. I am suggesting that
3 in many cases the kinds of activity that you are talking about
4 may be prohibited already, or may not in fact take place
5 already because they would not come within the prohibitions in
6 the organic act --

7 MR. STUBBS: Those acts though, Mike, were insuf-
8 ficient to comfort Moorhead if we wouldn't have the Moorhead
9 Amendment.

10 MR. GLOMB: But, he was talking about legislation
11 that was pending at the time.

12 MR. STUBBS: But, nothing would prohibit our regula-
13 tion from going beyond that and reaching legislative pro-
14 posals. If in fact we're trying, if there is a evil in Grass
15 Roots lobbying it's an evil that would embrace not merely
16 pending legislation, but the stimulation of proposals for
17 legislation.

18 MR. WIESEMAN: I think what Mike is saying, and I
19 think that the statute can be fairly read to say, that we can't
20 lobby at all, either Grass Roots or any other way, for legis-
21 lation that is not pending. I mean, in other words, that is
22 prohibited altogether. And, therefore, only when there is
23 pending legislation that will affect the client, and you have
24 an eligible client who needs it, etc., then that is the excep-
25 tion to the prohibition generally on lobbying, that is contained

...the Grass Roots Lobbying anyway, but you can't lobby at
all unless they fall in the exception. I am suggesting that
in many cases the kinds of activity that you are talking about
may be prohibited already, or may not be safe to do.

...body because they would not come within the prohibition in

the organic act --

MRS. STUBBS: Those are things, which, were in fact

likely to confer benefit or we wouldn't have the prohibition

Amendment.

MR. GEORGE: But, he was talking about legislation

that was pending at the time.

MRS. STUBBS: But, nothing would prohibit our legis-

tion from going beyond that and reaching legislative pro-

visions. If in fact we're trying, if there is a evil in Grass

Roots lobbying it's an evil that would embrace not merely

pending legislation, but the stimulation of proposals for

legislation.

MR. WINTERMAN: I think what he is saying, and I

think that the statute can be fairly read to say, that we can't

lobby at all, either Grass Roots or any other way, for legis-

lation that is not pending. I mean, in other words, that is

prohibited altogether. And, therefore, only where there is

pending legislation that will affect the citizen, and you have

an eligible client who needs it, then that is the excep-

tion to the prohibition generally on lobbying, that is contained

1 in the statute.

2 MR. GLOMB: Except in so far as you are invited, and
3 if you are invited --

4 MR. STUBBS: Then it's not lobbying.

5 MR. GLOMB: Well, you don't have the problems that
6 Moorhead is addressed to.

7 MR. STUBBS: That is not lobbying.

8 MS. SLAUGHTER: I want to be sure I understand this.
9 If legislation is not pending at all, then you cannot lobby for
10 an eligible client?

11 MS. WIESEMAN: That's right.

12 MR. DANA: I see Moorhead really as a procedural
13 attack to take all of the activities which are lobbying, and
14 see certain types of activity are not possible. And, I see
15 the approach in 3480, and in the statute as substantive, saying
16 this, these kinds of issues are not permitted. My feeling is
17 that, frankly, the restrictions, current restrictions in our
18 act are not restrictions at all, and I believe that if a
19 client came to a recipient's office and said I believe that it
20 would be in my personal interest to have a bill introduced in
21 the Legislature to do away with private property, and it would,
22 I would be, by that, by its passage I would, I would be in the
23 long run wealthier, that a legal service corporation could
24 lobby for that bill, and could encourage legislators to intro-
25 duce it and could work for it from beginning to end, draft it,

in the statute.

MR. CHAMBER: Except to so far as you are invited, and

if you are invited --

MR. STUBBS: Then it's not lobbying.

MR. CHAMBER: Well, you don't have the problem that

everybody is addressed to.

MR. STUBBS: That is not lobbying.

MR. STUBBS: I want to be sure I understand this.

If legislation is not pending at all, then you cannot lobby for

an eligible client.

MR. WATKINS: That's right.

MR. WATKINS: I use Moorhead really as a procedural

device to take all of the activities which are lobbying, and

also certain types of activity are not possible. And I see

the approach in 3480, and in the statute as substantive, saying

that these kinds of issues are not permitted. My feeling is

that, frankly, the restrictions, current restrictions in our

law are not restrictions at all, and I believe that if a

bill came to a legislator's office and said I believe that it

would be in my personal interest to have a bill introduced in

the legislature to do away with private property, and it would

I would be, by that, by the passage I would, I would be in the

good position, that a legal advice corporation could

lobby for the bill, and could encourage legislators to intro-

duce it and could work for its passage in order that it

1 take it up there, find somebody to introduce it and go for-
2 ward. I think what Moorhead would do would prevent them from
3 sending out a letter to everybody saying write your legislator.
4 What I am troubled about, is what, my concern is that the pro-
5 posed regulation may not, may not go far enough in defining
6 what Moorhead was, was getting at. And, for instance, if one
7 of our recipients, or one of our support centers were to write
8 an article characterizing a piece of pending legislation as
9 either good or bad, and send it to every opinion maker on
10 their list, or saying, or showing the pros and cons as they do,
11 I would think a strong case could be made if that particular
12 piece of legislation is pending in Congress or a State
13 Legislature, that that is, is circumscribed by Moorhead. But,
14 I am not sure your regulation would circumscribe it if it was
15 just informational. If a letter goes out, I mean, one way to
16 defeat a piece of legislation is to build, send a letter, to,
17 just to have the polls go up or down on that subject. And,
18 everybody says what is either, you get everybody saying it's a
19 good idea or a bad idea and the legislators don't have to be
20 contacted directly, they kind of pick it up because they are
21 good at that, that is the reason they got elected.

22 My concern is that your regulation, the only thing that,
23 the only thing that, or, the connecting link between Moorhead
24 and your regulation are the two sentences in your memo that
25 refer to similar restrictions interpreted by, by treasury and

1 take it up there, find somebody to introduce it and go for-
 2 ward. I think what Moorhead would do would prevent them from
 3 sending out a letter to everybody saying what your legislation
 4 would do. I am troubled about, is what, my concern is that the pro-
 5 posed regulation may not, may not go far enough in defining
 6 what Moorhead was, was getting at. And, for instance, if one
 7 of our recipients, or one of our support centers were to write
 8 an article characterizing a piece of pending legislation as
 9 either good or bad, and send it to every opinion maker on
 10 their list, or saying, or showing the pros and cons as they do,
 11 I would think a strong case could be made that particular
 12 piece of legislation is pending in Congress or a State
 13 legislature, that that is, is characterized by Moorhead. But
 14 I am not sure your regulation would characterize it if it was
 15 just informational. If a letter goes out, I mean, one way to
 16 defend a piece of legislation is to build, send a letter to,
 17 just to have the balls go up or down on that subject. And,
 18 everybody says what is either, you get everybody saying it's a
 19 good idea or a bad idea and the legislators don't have to be
 20 contacted directly, they find out just if up because they are
 21 good or bad, that is the reason they got elected.
 22 My concern is that your regulation, the only thing that
 23 the only thing that, or, the connecting link between Moorhead
 24 and your regulation are the two sentences in your memo that
 25 refer to similar restrictions interpreted by, by Treasury and

1 the GAO. And, I, I just, I am just asking you to be sure of
2 that. The link that you draw is accurate, I can't, I cannot
3 see those and so I don't know if, if the regulations that pro-
4 mulgated out of other statutes are as intimated (phonetic) as
5 that. My concern is that, and I haven't articulated it very
6 well, but that is the concern.

7 MS. WIESEMAN: That is the issue also, that the
8 problem, and in drafting this and trying to reconcile, the
9 educational outreach function of a program, and the provision
10 prohibiting the lobbying as in Moorhead, where those two come
11 together is the, the really difficult issue. One way to re-
12 solve that is to say that the newsletter, if it doesn't, and
13 I was talking to Mr. McKee about that, that the implied in
14 there doesn't have to have the magic words, and that's why
15 that's in the regulation. But, you must look at the content,
16 We, it was our opinion, you have to look at the content. If
17 it is simply, and "simply", informational --

18 MR. DANA: I think I am missing something. If you
19 focus on the word pending, and if the legislation is not the
20 law, which would be the nature of legislation which is pending,
21 what is the function of a communication to the fields,
22 thousands and thousands of lawyers across the land, that this
23 particular piece of legislation is either good or bad, or the
24 strengths and weaknesses of it are, is it because we want the
25 lawyers to be ready to take advantage of this the moment it

the GAO. And I, I just, I am just asking you to be sure of
 that. The link that you drew in occurred. I can't, I cannot
 use those and so I don't know if, if the regulations that pro-
 vided out of other statutes are an intended (phonetic) or
 that. My concern is that, and I haven't articulated it very
 well, but that is the concern.

MR. WISSMAN: That is the issue also, that the
 problem, and in drafting this and trying to reconcile the
 educational outreach function of a program, and the provision
 prohibiting the lobbying as *in bonam*, when there were some
 together in the, the really difficult issue. One way to re-
 solve that is to say that the new statute, if it doesn't, and
 I was talking to my seniors about that, that the implied in
 there doesn't have to have the magic words, and that's why
 courts in the *regulation*, that, you must look at the content,
 We, it was our opinion, you have to look at the content. If
 it is simply, and "simply", informational.

MR. DAVIS: I think I am misreading something. If you
 focus on the word *bonam*, and if the legislation is not the
 law, which would be the nature of legislation which is pending
 what is the function of a communication to the States,
 thousands and thousands of lawyers across the land, that this
 particular piece of legislation is either good or bad, or the
 examples and weaknesses of it are, is it because we want the
 lawyers to be ready to take advantage of this the moment it

1 passed, or is that the justification for sending out a letter
2 saying this is good or bad before it's passed? Or, on the
3 other hand, is the reason for it to make sure that if it's bad
4 it doesn't get passed and if it's good it gets supported?

5 MS. WIESEMAN: I think the, the first justification
6 would be the one that would be, that would be the justification
7 utilized for it. That one of the things that, the regulation
8 says to the public at large, or to a section, or a section of
9 the public, and one of the areas we discussed is, is the mail-
10 ing list really, does that control whether it's, whether it's
11 for the program's information, for instance, support center
12 and newsletters, is it for programs for their information, or
13 is it really, because of the nature of the mailing and to
14 whom it's addressed, does that change it into something else?
15 Is the fact that corporation money is used for that, is that
16 the proper use of corporation money in any case, to mail to
17 people who are not program recipients, or not for the benefit
18 of the program. But, the, the ABA opinions concerning the
19 corporation's functions, they said that one of the things that
20 the legal services program is permitted to do, ethically with-
21 in the ABA structures, is to perform educational functions
22 for their clients. And, that, and the, one of the functions
23 of the support centers is to provide education, or information
24 and education to the programs. And, it's where these two come
25 together is where the problem in interpretation of trying to

1 passed, or is that the justification for sending out a letter
 2 saying this is good or bad before it's passed, or, on the
 3 other hand, is the reason for it to make sure that if it's bad
 4 it doesn't get passed and if it's good it gets supported?
 5 DR. WILKINSON: I think that the first justification
 6 would be the one that would be, that would be the justification
 7 utilized for it, that one of the things that the reputation
 8 says to the public at large, or to a section, or a section of
 9 the public, and one of the areas we discussed is, is the main-
 10 ing that really, does that control whether it's, whether it's
 11 for the program's information, for instance, support center
 12 and newsletters, is it for programs for their information, or
 13 is it really, because of the nature of the mailing and so
 14 when it's absorbed, does that change it into something else?
 15 In the fact that corporation money is used for that, is that
 16 the proper use of corporation money in any case, to mail to
 17 people who are not program recipients, or not for the benefit
 18 of the program, and, too, the ABA opinions concerning the
 19 corporation's functions, they said that one of the things that
 20 the legal services program is permitted to do, ethically with-
 21 in the ABA structure, is to perform educational functions
 22 for their clients. And that, and that, one of the functions
 23 of the support centers is to provide education, or information
 24 and education to the program. And, it's where these two come
 25 together is where the problem in interpretation of trying to

1 reconcile those two areas.

2 MR. DANA: Mr. Chairman, this is my last comment,
3 but I think the reason we are looking at 2393, and 3480, is
4 because of Congress's frustration with us. I mean, it says,
5 no money can be used for publicity of propoganda proposing to
6 either promote or defeat pending legislation. And, every
7 single support center, after this legislation is passed, is
8 going to say, for educational purposes, in case this legisla-
9 tion passes we just want to tell you how terrible it is, or we
10 just want to tell you how great it is. And, you know, it just,
11 it's just, I mean, we are, I have the utmost respect that we
12 will be able to frustrate Congress's intent and accomplish
13 exactly the same objective that we have been doing that caused
14 this legislation to pass. And, that is what worries me be-
15 cause if we do not vigorously live within the structures that
16 are made upon us, we are going to get more restrictions. I
17 am hopeful that this particular regulation will be successful,
18 and I am apprehensive that it would.

19 MR. PARAS: Have you any suggestion, Howard? With
20 reference specifically to the proposed regulation, what
21 thoughts have you, if any? Are you recommending that we oppose
22 it for example?

23 MR. DANA: Well, see, I have not seen, I have never
24 met Mr. Moorhead, I don't know, I haven't read all of the
25 legislative history of the Amendment. Our staff has and they

1 reconcile those two areas.

2 MR. DAVIS: Mr. Chairman, this is my last comment,

3 but I think the reason we are looking at 2302 and 2480, is

4 because of Congress's frustration with us. I mean, it says,

5 no money can be used for publicity of propaganda proposing to

6 either promote or defeat pending legislation. And, every

7 single support center, after this legislation is passed, is

8 going to say, for educational purposes, in case this legisla-

9 tion passes we just want to tell you how terrible it is, or we

10 just want to tell you how great it is. And, you know, it just

11 is just, I mean, we are, I have the utmost respect that we

12 will be able to frustrate Congress's intent and accomplish

13 exactly the same objective that we have been doing that caused

14 this legislation to pass. And, that is what worries me be-

15 cause if we do not vigorously live within the structures that

16 are made upon us, we are going to get more restrictions. I

17 am hopeful that this particular regulation will be successful,

18 and I am apprehensive that it would.

19 DR. PARAS: Have you any suggestion, howards? With

20 reference specifically to the proposed regulation, what

21 thoughts have you, if any? Are you recommending that we oppose

22 it for example?

23 MR. DAVIS: Well, see, I have not seen, I have never

24 read the Board's, I don't know, I haven't read all of the

25 legislative history of the Amendment. Our staff has and they

1 have dealt with comparable amendments that have appeared in
2 other acts and regulations promulgated by GAO and the treasury

3 MR. KAPLAN: I think the implementation of Moorhead
4 does not begin to meet the Board's concerns about lobbying.
5 It's, I urge the staff to begin there because it was something,
6 in my opinion, that was long overdue, that we should have imple-
7 mented, in fact my predecessor had it in mind, agreed to it in
8 a letter to GAO and it just never happened. So, I said let's
9 begin here, go ahead with it, and it should not be seen as
10 solving the larger consideration, but rather as something
11 there is no reason to, to be inhibited about now while the
12 staff continues to address this reather complex area of lobby-
13 ing in the context of 3480 and other provisions. But, I, in
14 this connection I would like to say that I think all the frus-
15 trations that have been expressed, particularly those remarks
16 of Howard's, are warranted. Let me give you another troubling
17 example, not for you to respond to, Mary, but to give you a
18 sense of the complexion of the problem. A recent publication
19 of a support center I received this week, the publication it-
20 self was, I thought entirely proper and educational, but
21 appended to it, as an exhibit, was a statement of another organ-
22 ization which was expressly political and had identified the
23 Senators and the timetable for the hearing and so forth. So,
24 the implication is clear, this is a area that is difficult to
25 regulation when you have skillful and talented and dedicated

have dealt with comparable amendments that have appeared in other acts and regulations promulgated by GAO and the treasury

MR. KATZMAN: I think the implementation of Morhead does not begin to meet the board's concerns about lobbying.

Let's urge the staff to begin there because it was something in my opinion, that was long overdue, that we should have implemented, in fact my predecessor had it in mind, agreed to it in a letter to GAO and it just never happened. So, I said let's begin here, do these with it, and it should not be seen as solving the larger consideration, but rather as something there is no reason to be inhibited about now while the staff continues to address this rather complex area of lobbying in the context of 3430 and other provisions. But, in this connection I would like to say that I think all the transactions that have been expressed, particularly those remarks of Howard's, are warranted. Let me give you another troubling example, not for you to respond to, Mary, but to give you a sense of the complexity of the problem. A recent publication of a support center I received this week, the publication itself was, I thought entirely proper and educational, but appended to it, as an exhibit, was a statement of another organization which was expressly political and had identified the senators and the timetable for the hearing and so forth. So, the implication is clear, this is a area that is difficult to regulate when you have skillful and talented and dedicated

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1 attorneys in the field who take a different position on it.
2 And, I think that it's going to be one that we are going to
3 have to continue to wrestle with in an imaginative and responsible
4 way, and the staff work on that is in process, but really not
5 in a state to be presented to the Board today.

6 (Brief break.)

7 MR. STUBBS: First of all I would ask my colleagues
8 on the Board to speak up a little louder so the back row can
9 hear all our pearls. Not only that, I missed seeing Miss Nell
10 Holley (phonetic) come in, she's a Board member of the Southern
11 Minnesota Regional Legal Services, vice-chairman --

12 MS. HOLLEY: Central Minnesota.

13 MR. STUBBS: Central Minnesota, oh my goodness, I
14 just blew it. She was one of our hosts yesterday in the
15 briefing that we received. I am glad to see you here.

16 MR. MCKEE: This is a new section, 1612.4E, I am
17 trying to find D, it seems it stops, if I have the right copy.
18 Let's see, 1612.4A, B and C.

19 MR. GLOMB: That is my personal copy of the regula-
20 tions which does not have the, all of the amendments in it.
21 The 1612 amendments are reproduced in the blue book on page
22 114.

23 MR. MCKEE: I was wondering, if you would turn to
24 page 6 of the Moorhead Amendment. This opposed amendment of
25 regulation, I agree, with Howard, I still think it's a bit

1 attorney in the field who take a different position on it.
 2 And I think that it's going to be one that we are going to
 3 have to continue to wrestle with in an imaginative and responsive
 4 way, and the staff work on that is in process, but really not
 5 in a state to be presented to the Board today.

6 (Brief break.)

7 MR. STUBBS: First of all I would ask my colleagues
 8 on the Board to speak up a little louder so the bad row can
 9 hear all our points. Not only that, I missed seeing Miss Hill
 10 today (phonetic) come in, she's a Board member of the Southern
 11 Minnesota Regional Legal Services, vice-chairman --

12 MR. HOLBY: Central Minnesota.

13 MR. STUBBS: Central Minnesota, oh my goodness, I

14 just blew it. She was one of our hosts yesterday in the

15 building that we received. I am glad to see you here.

16 MR. MORSE: This is a new section, ILSAB, I am

17 trying to find it, it seems it says, if I have the right copy,

18 let's see, ILSAB, B and C.

19 MR. GIBBS: That is my personal copy of the regular

20 lions which does not have all of the amendments in it.

21 The ILS amendments are reproduced in the blue book on page

22 118.

23 MR. MORSE: I was wondering if you would turn to

24 page 6 of the Board Amendment. This opposed amendment of

25 opposition, I agree, with forward, I still think it's a dif-

1 general and it could go a bit further. I would rather have
2 something like this, instead of saying shall not include, that
3 you say grantees, you know, you make it very mandatory,
4 grantees shall not, and then list, as opposed to legislative
5 activity shall not include, and you list it all. Make it
6 mandatory. I was just wondering, if you turn to page 6 of the
7 Moorhead Amendment, which has some very good language on,
8 theoretically on this subject, and you say that grantees, or
9 funding of a program, shall not, and you pick up line 9 almost

10 MR. GLOMB: I am sorry, the copy that I have only
11 goes to page 4, and --

12 MR. MCKEE: I am sorry, 3480, page 6. Now, this is
13 just for discussion. You say fundees, or grantees shall not,
14 and then you pick up line 9, undertake directly or indirectly
15 by personal service, newsletter, telegram, telephone, all of
16 that language, designed to influence any member of Congress,
17 all that section, would that hit what you are talking about?
18 See, it's very specific in here. I just --

19 MR. GLOMB: I think so, you are saying that instead
20 of using the word communication, specify these things as being
21 kinds of communications? I think that is what we were thinking
22 of in terms of communications.

23 MR. DANA: The problem is that I think this may be
24 focused on communications directly to the Congressmen and
25 Legislators, and Moorhead is designed for correspondence, the

1 general and it could do a bit further. I would rather have
 2 something like this, instead of saying shall not include, that
 3 you say grantee, you know, you make it very mandatory,
 4 grantees shall not, and then list, as opposed to legislative
 5 activity shall not include, and you list it all. Make it
 6 mandatory. I was just wondering, if you turn to page 6 of the
 7 Alcohol Amendment, which has some very good language on
 8 theoretically on this subject, and you say that grantees, or
 9 funding of a program, shall not, and you pick up line 9 almost
 10 MR. GEORGE: I am sorry, the copy that I have only

11 goes to page 4, and --
 12 MR. WALKER: I am sorry, 3480, page 6. Now, this is
 13 just for discussion. You say fundees, or grantees shall not,
 14 and then you pick up line 9, undertake directly or indirectly
 15 by personal services, newsletter, telephone, all of
 16 that language, designed to influence any member of Congress,
 17 all that section, would that be what you are talking about?
 18 MR. GEORGE: I am sorry, I just --

19 MR. GEORGE: I think so, you are saying that instead
 20 of using the word communication, specify these things as being
 21 kinds of communications? I think that is what we were thinking
 22 of in terms of communications.

23 MR. DANA: The problem is that I think this may be
 24 focused on communications directly to the Congressman and
 25 legislators, and focused is designed for correspondence, the

1 kind of scatter-gun. They talk about publicity and propoganda
2 as distinguished from a communication to inform, or advise, or
3 communicate. This is any funds, this would, in effect, that
4 would go too far. If you were trying to fill the Moorhead
5 requirement of publicity and propoganda, I think that would
6 just mean no funds may be used to take out the --

7 MR. MCKEE: I wouldn't use that language. You would
8 have to play with the language in terms of appeals designed to
9 influence the general public, propoganda, etc. The same con-
10 cept of what Moorhead is talking about.

11 MR. STUBBS: To promote any of those things --

12 MR. MCKEE: Have more of the specific points in there.
13 Do you see my point? Not verbatim out of here, but that kind
14 of approach, which is more specific, and more direct as to
15 what we are talking about. It kind of gets rid of the word
16 implied, which still bothers me. We get too much in there.

17 MR. STUBBS: The proposed regulation, Mary, if I
18 read it correctly, talks about contacting elected representa-
19 tives, whereas Moorhead seems to be directed towards publicity
20 propoganda, of which contact would be only one element. I am
21 sure that the ultimate element, is to influence the Legisla-
22 ture, but there may be other pressures that can be brought
23 that would be embraced within publicity and propoganda other
24 just urging someone to contact the Legislature.

25 MR. GLOMB: As Mary indicated, we relied on the

kind of advertisement. They talk about publicity and propaganda as distinguished from a communication to inform, or advise, or communicate. This in any funds, this would, in effect, that would go too far. If you were trying to fill the overhead equipment of publicity and propaganda, I think that would just mean no funds may be used to take out the --

MR. MORRIS: I wouldn't use that language. You would have to play with the language in terms of appeals designed to influence the general public, propaganda, etc. The same concept of what overhead is talking about.

MR. STUBBS: To promote any of those things --

MR. MORRIS: Have more of the specific points in there.

to you are my point. Not verbatim out of here, but that kind of approach, which is more specific, and more direct as to what we are talking about. If kind of gets rid of the word tangled, which still bothers me. We get too much in there.

MR. STUBBS: The proposed regulation, Mary, if I

read it carefully, talks about contacting elected representatives, whereas overhead seems to be directed towards publicity propaganda, of which contact would be only one element. I am sure that the ultimate element, in to influence the legislative body, but there may be other pressures that can be brought that would be embraced within publicity and propaganda other than trying someone to contact the legislators.

MR. MORRIS: As fairly indicated, we relied on the

1 general accounting office for their interpretation, they have
2 had much more experience in interpreting that language, and
3 essentially carry forth, virtually verbatim, their definition
4 of what propoganda is, and that is communications to the public,
5 or selected members, or appeals to the public or selected
6 members thereof, designed to influence legislation.

7 MR. KAPLAN: If I understand the Board's comments,
8 and I have had the advantage of Bill Harvey's comments, I
9 think what the Board is directing us to, is to search for more
10 abrasive language, and more restrictive language, and be more
11 imaginative and not be confined to what GAO did in a different
12 setting. And, maybe with the guidance we ought to go back
13 and do some more homework on it and see if we can propose a
14 language that would, more faithfully, reflect the concerns
15 that have been expressed today, and over the phone to myself.

16 MR. STUBBS: Let me ask a couple of other questions
17 and solicit those from other members of the Board in that con-
18 nection. You have mentioned the educational function that is
19 countenanced in advising clients, and informing clients. And,
20 if possible, or at least I read you to suggest a conflict be-
21 tween that rule and the, a restriction on notifying clients of
22 impending legislation. Cannot the education, which is affirma-
23 tively authorized, be read to pertain to existing legislation
24 rather than to that which has now been prescribed, or at least
25 included in the prescription, pending legislation, that which

1 general accounting office for their interpretation, they have
 2 had much more experience in interpreting that language, and
 3 essentially carry forth, virtually verbatim, their definition
 4 of what propaganda is, and that is communications to the public
 5 or selected members, or appeals to the public or selected
 6 members thereof, designed to influence legislation.

7 MR. KAPLAN: I understand the board's comments.

8 and I have had the advantage of Bill Harvey's comments. I
 9 think what the board is directing us to do is to search for more
 10 abstractive language, and more restrictive language, and be more
 11 imaginative and not be confined to what GAO did in a different
 12 setting. And, maybe with the guidance we ought to go back

13 and do some more homework on it and see if we can propose a
 14 language that would, more faithfully, reflect the concerns
 15 that have been expressed today, and over the phone to myself.

16 MR. STUBBS: Let me ask a couple of other questions
 17 and solicit those from other members of the board in that con-
 18 nection. You have mentioned the educational function that is
 19 contemplated in advising clients, and informing clients. And,
 20 if possible, or at least I read you to suggest a conflict be-
 21 tween that rule and the, a restriction on notifying clients of
 22 impending legislation. Cannot the education, which is affirm-
 23 atively authorized, be read to pertain to existing legislation
 24 rather than to that which has now been prescribed, or at least
 25 included in the prescription, pending legislation, that which

1 is not yet law, to sort of allow the Congress, or a Legisla-
2 ture to make a determination without what other pressures
3 might be otherwise generated. And, if so, would not that
4 require some modification of in our, in our regulation, which
5 talks about, I believe in D2, 1612D2, nothing in this section
6 is intended to prohibit employees from informing a client
7 about a new or proposed statute. If, in the one hand, we are
8 prohibiting bulletins, etc., which relate to proposed legisla-
9 tion and in the other we are saying it's all right to do it,
10 don't we create an inconsistency that is going to generate
11 problems for us? And, I might go on to raise a question that
12 has been presented to me. If we are obliged to educate
13 clients, does not that embrace the submission of analyses, as
14 well as reports on status of pending legislation as a matter
15 of education and information? And, just purely to be in the
16 double, I ask when does that providing information become
17 stimulation, at what point have you gone beyond merely pro-
18 viding information? Is it the amount of it you provide, the
19 extend of your analysis, the comparison with existing legis-
20 lation, the consequences that may ensue if this legislation
21 be enacted? In other words, at what point do we come out of
22 the thicket and are doing something that is legitimate, at
23 what point do we go back in and get involved in publicity,
24 or propoganda with respect to pending legislation? That is
25 why I raise the question, if the educational function doesn't

1 is not yet law, to sort of allow the Congress, or a legislative
2 body to make a determination without what other pressures
3 might be otherwise generated. And, if so, would not that
4 require some modification of in our, in our reputation, which
5 talks about, I believe in US, 161302, nothing in this section
6 is intended to prohibit employees from informing a client
7 about a law or proposed statute. If, in the one hand, we are
8 prohibiting bullying, etc., which relate to proposed legisla-
9 tion and in the other we are saying it's all right to do it,
10 don't we create an inconsistency that is going to generate
11 problems for us? And, I might go on to raise a question that
12 has been presented to me. If we are obliged to educate
13 clients, does not that embrace the submission of analyses, as
14 well as reports on status of pending legislation as a matter
15 of education and information? And, just purely to be in the
16 double, I ask when does that providing information become
17 persuasion, as what point have you gone beyond merely pro-
18 viding information? Is it the amount of it you provide, the
19 extent of your analysis, the comparison with existing legisla-
20 tion, the consequences that may ensue if this legislation
21 be enacted? In other words, at what point do we come out of
22 the thick and are doing something that is tantamount, at
23 what point do we go back in and get involved in publicity,
24 or propaganda with respect to pending legislation? That is
25 why I raise the question, if the educational function doesn't

1 terminate in the light of Moorhead, with existing legislation,
2 and that we just, let some other function in society other than
3 the grant of programs under this particular funding perform
4 this informational service.

5 MS. WORTHY: That is one of the things that really
6 bothers me, where we were talking about, were responsible for
7 educating clients, and Mr. Stubbs mentioned should we let
8 some other program, or whatever, be responsible for that.
9 But, I don't think we can depend on another program to do that
10 when we are saying, our clients need to know in order to better
11 their lives. That is the main thing that really bothers me
12 here, because if we are not educated to pending regulations and
13 whatever that may affect our lives, then when that does come
14 about we will just be completely in the dark. I think, in
15 some way, somehow, we have to consider that. We don't have
16 access to Congressmen, or whatever kind of news that is going
17 to happen up on the Hill or whatever, that is going to affect
18 our lives. We depend on our programs, our support centers, to
19 make us aware of things that is pending, that is going to
20 affect us tomorrow or the next day. I can take, for instance,
21 when they started talking about taking people's tax check for
22 non-support, we were not aware of that, or we would not have
23 been able to deal with it had not someone, a friend of mine
24 or whatever, told us that that kind of enactment was pending.
25 We wouldn't have been able to deal with it, it would have just

1 terminals in the light of Moorhead, with existing legislation,
2 and that we just, let some other function in society other than
3 the grant of programs under this particular funding perform
4 this informational service.

5 MS. WORTHY: That is one of the things that really
6 bothers me, where we were talking about, were responsible for
7 educating clients, and the Stubbins mentioned should we let
8 some other program, or whatever, be responsible for that.
9 But, I don't think we can depend on another program to do that
10 when we are saying, our clients need to know in order to better
11 their lives, that is the main thing that really bothers me
12 here, because if we are not educated to pending regulations and
13 whatever that may affect our lives, then when that does come
14 about we will just be completely in the dark. I think, in
15 some way, somehow, we have to consider that. We don't have
16 access to Congressmen, or whatever kind of news that is going
17 to happen up on the Hill or whatever, that is going to affect
18 our lives. We depend on our programs, our support centers, to
19 raise us aware of things that is pending, that is going to
20 affect us tomorrow or the next day. I can take, for instance,
21 when they started talking about taking people's tax check for
22 non-support, we were not aware of that, or we would not have
23 been able to deal with it had not someone, a friend of mine
24 or whatever, told us that that kind of enactment was pending.
25 We wouldn't have been able to deal with it, it would have just

1 happened to people, they wouldn't have known what was going
2 on. And, people were depending on, people that were out of
3 jobs at that time, working when the tax was taken out, but out
4 of a job at the time that this was enacted. We wouldn't have
5 been able to do anything about that, it would have just
6 happened, and it did happen to a couple of people because we
7 were not aware of the fact that that had been implemented.
8 Educating our clients in the community is very important,
9 especially with the things that are pending that is going to
10 affect our lives. I don't know how we are going to deal with
11 that, but it's very important that that educational part, and
12 I am not saying negative kinds of propoganda or whatever
13 should be put out there, but in some way, somehow, we have to
14 support the information getting to the clients. And, a lot
15 of times you might find information going to programs from
16 support centers and you would say that is not good, but we
17 depend on our programs locally to get that information out to
18 our client. So, it may be some kind of way that that is not
19 being done, or it may be being done wrong, but that educational
20 part of it we have to support in some, in some kind of way.
21 We just cannot say you can't write papers, or cannot send out
22 information.

23 MR. STUBBS: I think we got a high note there, let's
24 take about a fifteen minute recess and we will come back and
25 continue with any comments, or observations of the members of

happened to people, they wouldn't have known what was going on. And, people were depending on, people that were out of jobs at that time, working when the tax was taken out, but out of a job at the time that this was enacted. We wouldn't have been able to do anything about that, it would have just happened, and it did happen to a couple of people because we were not aware of the fact that had been implemented. Educating our clients in the community is very important, especially with the things that are pending that is going to affect our lives. I don't know how we are going to deal with that, but it's very important that that educational part, and I am not saying negative kind of propaganda or whatever should be put out there, but in some way, somehow, we have to support the information getting to the clients. And, a lot of times you might find information going to programs from support centers and you would say that is not good, but we depend on our programs locally to get that information out to our clients. So, it may be some kind of way that that is not being done, or it may be being done wrong, but that educational part of it we have to support in some, in some kind of way. We just cannot say you can't write papers, or cannot send out information.

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1 the Committee, and of the Board, and be more refreshed mentally
2 to receive the comments of the program people and others having
3 an interest in this.

4 (Brief break.)

5 MR. STUBBS: Mr. McKee, I believe I shut you off
6 before you came up with a comment.

7 MR. MCKEE: Your comment about the GAO, in regard to
8 the GAO report and its recommendation, its concept, just
9 general concepts, a tone of concern. What applies to the
10 post office doesn't apply to legal Services Corporation. I
11 think that GAO would welcome guidance from us in our own area
12 of expertise. So, I don't think we can use the GAO as kind of
13 a narrow focus in terms of what they outline. They set the
14 tone and the direction, and we pick up from that as to what
15 we should do --. Mr. Chairman, I would think that as you look
16 at 1612.4, there are a lot of sections to it, and they are
17 very closely intertwined and it's hard to deal with one, like
18 the proposal for an E, without looking at C and D and all the
19 others. I would recommend that maybe the staff could go back
20 and take a look at all of these things, but particularly D and
21 E in line with our discussion today. For example, in Section
22 C they talk about legislative offices, and if you just dealt
23 with D and E and then you look and say what is it the legis-
24 lative offices are saying over here, shouldn't it be so and so.
25 Have the staff take another look at this whole area in tune

the Committee, and of the Board, and be more refreshed mentally to receive the comments of the program people and others having an interest in this.

(Brief break.)

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before you came up with a comment.

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at 1012A, there are a lot of sections to it, and they are

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and take a look at all of those things, but particularly D and

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with A and B and then you look and say what is it the legis-

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have the staff take another look at this whole area in time

1 with what we talked about today, possibly D and C and other
2 sections, and then return, new language and discussion,
3 probably a broader approach on that whole section in line
4 with, even our discussion this afternoon on 3480 might have an
5 impact on what we want to put in there.

6 MR. STUBBS: Ms. Worthy, do you have any more comments?
7

8 MS. WORTHY: No.

9 MR. STUBBS: Anyone? Bill, we haven't heard from
10 you at all yet.

11 MR. EARL: Well, just a brief comment. I realize
12 we are in a difficult period of transition for the staff in
13 their seeking some guidance from the Board. What I would hope
14 is as policy begins to emerge here, and direction from the
15 Board, the staff would not be timid in reaching some of these
16 areas, particularly the ones that have been a long-standing
17 Congressional concern. If we don't do it, and do it force-
18 fully and effectively, we are going to get it done by Congress
19 in a much less flexible manner to deal with the specific
20 problems. So, once we get past this initial transition I
21 would hope the staff would act in a very direct and effective
22 manner.

23 MR. STUBBS: Ladies and Gentlemen of the audience,
24 we would like to hear from those of you who think you could
25 add to the matters that we are already balling up for our

1 with what we talked about today, possibly D and C and other
 2 motions, and then return, new language and discussion,
 3 probably a broader approach on that whole section in line
 4 with, even our discussion this afternoon on 3480 might have an
 5 impact on what we want to put in there.

6 MR. STORRS: Ms. Worthy, do you have any more com-

7 ments?

8 MR. WORTHY: No.

9 MR. STORRS: Anybody else? We haven't heard from

10 you at all yet.

11 MR. BARR: Well, just a brief comment. I realize

12 we are in a difficult period of transition for the staff in
 13 their seeking some guidance from the Board. What I would hope
 14 is as policy begins to emerge here, and direction from the
 15 Board, the staff would not be timid in reaching some of those
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 20 problems. So, once we get past this initial transition I
 21 would hope the staff would act in a very direct and effective

22 manner.

23 MR. STORRS: Ladies and Gentlemen of the audience,

24 we would like to hear from those of you who think you could

25 add to the matters that we are already talking up for our

1 staff, particularly comments as you have heard them that re-
2 late to the educational function of the Legal Services Board,
3 the problem of reconciling that with communications to eligi-
4 ble clients, or other elements of the community, maintenance of
5 legislative offices, the language of the regulation itself,
6 the interplay with existing regulations on legislative advoca-
7 cacy in general. Those of you who might have comments, I
8 would ask you, if you would, to stand so that we cannot only
9 hear you but see you. Secondly, give your name and your organ-
10 ization or activity so that we can have you well identified
11 for the record for those of our Board who are not here. I
12 would ask you to be sensitive to the time, and give us the
13 benefit of your remarks with those limitations. Is there any-
14 one who would like to have a comment? I know Mr. Veney does,
15 but I will let him come forward later. Yes, ma'am.

16 MS. TINA GIBSON (phonetic): My name is Tina Gibson,
17 I am presently the chairperson for the State of Minnesota
18 Clients Counsel. I am also an eligible client, and I am
19 affiliated with the Minneapolis Legal Aid Society of Minnesota.
20 My concern about, I am really concerned about the restrictions
21 that is being placed on, or the language that refers to the
22 fact that even information, limiting information that goes out.
23 And, to deal with a very specific example, I am on the mailing
24 list for the housing law project, which is funded through the
25 Legal Services Corporation, and it's because of being on that

1 easily, particularly comments as you have heard them that re-
 2 late to the educational function of the Legal Services Board,
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 22 fact that even information, limiting information that goes out,
 23 and to deal with a very specific example, I am on the mailing
 24 list for the housing law project which is funded through the
 25 Legal Services Corporation, and it's because of being on that

1 mailing list and receiving that information that I have been
2 able to realize the cut-backs in public housing. Personally I
3 am a resident of public housing and also associated with
4 other members who are residents of public housing. Our big
5 concern is with the cut-backs, what is the City of Minneapolis
6 going to do to maintain their public housing stock? If in
7 fact it has to sell it off, how is that going to affect those
8 of us who live there? Is there going to be some program that
9 maybe we ourselves would be able to purchase that? With
10 rents the way, I mean, in Minneapolis the present going rate
11 for a two bedroom apartment is four hundred and fifty dollars
12 a month. None of us in public housing can afford that. We
13 are now able to effectively work with our local housing
14 authority to find some answers to these problems that probably
15 never would have happened if the information had not been made
16 available to us.

17 I understand the concerns about lobbying being done, but
18 I think it's vital that that flow of information not be cut
19 back. I have quite a few other concerns as a client who has
20 used legal services and received help from them, not necessarily
21 about what you are talking about now, but other things that
22 are in this regulation, concerning the private Bar involvement
23 in the experience we have had in Minneapolis of how well it
24 does not work. And, I hope that at some point you will also
25 be taking comments on that.

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22 are in this regulation, concerning the private bar involvement
23 in the experience we have had in Minneapolis of how well it
24 does not work. And I hope that at some point you will also
25 be taking comments on that.

1 MR. STUBBS: Thank you, and we are very pleased that
2 you were able to come here, and especially emphasize Ms.
3 Worthy's comments. I missed two other people earlier that I
4 think the rest of you might like to recognize. Mr. Roger
5 Cobb (phonetic) with the Minneapolis Legal Aid Society was one
6 of our hosts yesterday, as long and tall as he is I still
7 missed him when he snuck in here a little while ago. And, Mr.
8 Glenn Stophel from Chattanooga, Tennessee, a member of the
9 Legal Aid and Services Committee of the ABA, who never misses
10 one of our meetings because he likes to tell me how Chattanooga
11 is doing in comparison to my own home town. Glenn, we are
12 very happy to have you here.

13 Is there anyone else who would have a comment?

14 MS. CARLA OLSON: Well, my name is Carla Olson and I
15 am from Minneapolis and I would like to just speak briefly
16 about the discussion that you were having on this Moorhead
17 Amendment. I would just like to, whether this is relevant or
18 not I don't know, but I would just like to say that basically
19 what we are talking about is, what you are talking about, is
20 a group of people that is under-represented in our system. It
21 seems to me that these are possibly people who don't have
22 knowledge of the system, feel that the system does not work
23 for them, and, or, do not have resources available to them so
24 that they can participate. I would just like to state a ques-
25 tion that, isn't it our responsibility to help facilitate

1 MR. STUBBS: Thank you, and we are very pleased that
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13 In there anyone else who would have a comment?
 14 MS. CARLA OLSON: Well, my name is Carla Olson and I
 15 am from Minneapolis and I would like to just speak briefly
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 23 for them, and, or, do not have resources available to them so
 24 that they can participate. I would just like to state a ques-
 25 tion that, isn't it our responsibility to help facilitate

1 systematic changes in the law, to open avenues for people to
2 participate and add valuable knowledge, and insights, to, to
3 solutions of problems that people live? Thank you.

4 MR. STUBBS: Thank you. I think you have hit on one
5 of the issues that is involved in legal services, and any dis-
6 agreement that anyone may suggest I think merely is within the
7 confines of restrictive legislation. I think each member of
8 the Board would probably, as a bottom line, agree with you
9 right off, where some of us might depart from your premises
10 that we have been given an act with specific language in it
11 and a limited amount of money and told to make it work with
12 what you've got, and that would be the only time that I think
13 you would find that we would disagree with your premise. I
14 think legal services has been an avenue to provide many of
15 the objectives that you have suggested, and I thank you for
16 your comments. Are there any others? Bernie, I am not going
17 to let you get off without a comment because, Mr. Veney, for
18 those of you who do not know, is with the National Clients
19 Counsel. He has never failed to provide me with advice and
20 assistance, solicited or otherwise, but generally I appreciate
21 it very much, Bernie.

22 MR. VENEY: I guess I would just like to make an
23 overall comment. Moorhead certainly is part of a problem with
24 legal services, but I suspect we have to remember what Moor-
25 head in fact is, it's a rider to an appropriation act. In

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 18 those of you who do not know, is with the National Clients
 19 Council. He has never failed to provide me with advice and
 20 assistance, solicited or otherwise, but generally I appreciate
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22 MR. VENEV: I guess I would just like to make an
 23 overall comment. Moorhead certainly is part of a problem with
 24 legal services, but I suspect we have to remember what Moor-
 25 head in fact is, it's a rider to an appropriation act. In

1 order to get money freed up, the Congress bought into Moorhead.
2 But, when it deals with our authorizing legislation it
3 specifically after debate, and after proposed amendments,
4 specifically allowed the continued representation of eligible
5 clients, in the legislative forum. I think my problem is that
6 we may be trying to go beyond what the Congress intended,
7 simply because Moorhead is there and alive and well. I can't
8 suggest to you that you should not implement Moorhead, I hope
9 it would be implemented in a different kind of way, but clearly
10 I hear us, I hear you moving this into a whole discussion of
11 legislative advocacy, more appropriate perhaps for 3480 this
12 afternoon, but even there, I would hope that you would see the
13 continued need for the ability to do representation in the
14 legislative arena. I can give you a whole series of reasons
15 why, but I think there clients here who can give you, during
16 the course of the day if you will, much better reasons from
17 their own personal experience, not only here in Minneapolis
18 but in other places.

19 Just to extend this for one moment, I don't understand
20 what it is that you will anticipate that the several centers
21 would do at this point in time. For example, the welfare
22 center, if it does not in fact let people know what is going
23 on at the federal level, because these are now being changed
24 to the state level, where the state government will have to
25 pass, how are the clients to know? And again, I would make the

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1 comment I made in Minneapolis, think how much time you have
2 spent with your counsel, who for the most part are learned
3 lawyers, certainly you know and can interpret the statutes and
4 provisions far better than the clients can be expected to, yet
5 you seek the advice of counsel and several members of the staff.

6 MR. STUBBS: Thank you. If we were in Georgia I
7 wouldn't have any problem, because under the Georgia law you
8 cannot legislate in an appropriation act. Unfortunately the
9 Congress doesn't have that same restraint.

10 Are there others that would have observations to present?

11 MR. STOLEMAN (phonetic): I am David Stoleman, I am
12 a member of the Board of Directors of Northwest Legal Services,
13 and I would like to talk about just something briefly other
14 than what has been discussed this morning. I have a philoso-
15 phy, and it's a philosophy about a Judicare program, and I
16 would like to invite each of the members of the Board to come
17 up and view our program, or view the literature on it.

18 MR. STUBBS: The sled dogs weren't running the last
19 time I checked.

20 MR. STOLEMAN: We're up near the arctic circle, it's
21 not the end of the world but you can see it from there. We
22 cover an area, it's primarily rural, and we cover an area
23 geographically about the size of New Hampshire, and, really
24 the only way we can get legal services out to all the people
25 in this sparsely populated area is to have a Judicare program.

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 2 spent with your counsel, who for the most part are learned
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 4 provisions far better than the clients can be expected to, you
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 14 than what has been discussed this morning. I have a philoso-
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 21 not the end of the world but you can see it from there. We
 22 cover an area, it's primarily rural, and we cover an area
 23 geographically about the size of New Hampshire, and, really,
 24 the only way we can get legal services out to all the people
 25 in this sparsely populated area is to have a judicial program.

1 We have eighty-five percent of the attorneys participating in
2 our program. In my community we have about sixteen lawyers
3 and the only ones who aren't participating are myself, because
4 I am on the Board of Directors and I can't participate, and
5 another attorney who is about 74 years old and he's partially
6 retired. Other than that everybody is a participant. I think
7 all the rest of the communities are getting the same response
8 from the private Bar. The private Bar is interested, they
9 want to participate, and I think we have a very good program,
10 and we invite you to review what we have. I'd make myself
11 available for comments, and I don't want to take any more of
12 your time, but I want to alert you to that program, and it's
13 working.

14 MR. STUBBS: Thank you so much. We were very for-
15 tunate yesterday, in our briefing, to have had Mr. Dale
16 Kraft (phonetic), and Dick Taylor (phonetic) down from your
17 district who gave us an overview of their activities, and
18 several of us had a chance to talk about what they were doing.
19 You're right, this doesn't have anything to do with the Moor-
20 head Amendment, but we are all concerned with the most effec-
21 tive ways of making delivery, and your system is certainly
22 working for you all, and we are glad to hear about it. Yes,
23 ma'am.

24 MS. HILL: My name is Jean Hill (phonetic), and my
25 concern is that if we are not able to lobby, or advertise or

We have thirty-five percent of the attorneys participating in our program. In my community we have about sixteen lawyers and the only ones who aren't participating are myself, because I am on the Board of Directors and I can't participate, and another attorney who is about 74 years old and he's partially retired. Other than that everybody is a participant. I think all the rest of the communities are getting the same response from the private bar. The private bar is interested, they want to participate, and I think we have a very good program, and we invite you to review what we have. I'd make myself available for comments, and I don't want to take any more of your time, but I want to alert you to that program, and it's working.

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thank you,

MR. STUBBS: My name is Jean Hill (phonetic), and my

concern is that if we are not able to lobby, or advertise or

1 whatever you call it, is that we have seniors that are not
2 able to get out and make use of the services. And, if there
3 is no sign posted on their bulletin board and you've got 96
4 people living in a building that do not go out, are afraid to
5 go out. And, I think another segment of our population that
6 we are going to have affected is the Hmong community. And, if
7 you cannot lobby and write in their language, or go out and
8 talk to them they are going to be left out also.

9 MR. STUBBS: I think that one point perhaps I should
10 have made preliminarily, I don't know anyone on the Board who,
11 as a general proposition, disapproves of legislative advocacy
12 or lobbying. I think all of us have had sufficient experience
13 to recognize the value of that, and its usefulness. I think
14 the concern that we are manifesting here is whether or not
15 that is something we can lawfully do under the act and the
16 appropriations that we have. And, if we can, to what extent
17 can we do it. I don't think it's a negative approach to
18 letting legislators know of problems at all.

19 MS. HILL: Would it be for us people to lobby our
20 legislators?

21 MR. STUBBS: As individuals, you most certainly may.
22 The concern that we have is to those activities that are funded
23 and people who are within the Legal Services Act.

24 Are there any others of you all who have comments that
25 you would like to share with us? Mary, as I --

1. However you call it, is that we have seniors that are not
 2. able to get out and make use of the services. And, if there
 3. is no sign posted on their bulletin board and you've got 98
 4. people living in a building that do not go out, are afraid to
 5. go out. And, I think another segment of our population that
 6. we are going to have affected is the blind community. And, if
 7. you cannot lobby and write in their language, or go out and
 8. talk to them they are going to be left out also.

9. MR. STUBBS: I think that one point perhaps I should
 10. have made preliminarily, I don't know anyone on the board who,
 11. as a general proposition, disapproves of legislative advocacy
 12. or lobbying. I think all of us have had sufficient experience
 13. to recognize the value of that, and its usefulness. I think
 14. the concern that we are manifesting here is whether or not
 15. that is something we can lawfully do under the act and the
 16. appropriations that we have. And, if we can, to what extent
 17. can we do it. I don't think it's a negative approach to
 18. telling legislators know of problems at all.

19. MR. HILL: Would it be for us people to lobby our

20. legislators?

21. MR. STUBBS: As individuals, you most certainly may.
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 23. and people who are within the legal services act.

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25. you would like to share with us? Mary, as I --

1 MR. STOPHEL: Maybe I ought to say a word. As you
2 know, this problem of lobbying has been with us since the
3 Green Amendments when the first act was passed, because it has
4 been one of the most difficult things to deal with. The
5 standing committee's position has generally been, if you hire
6 a lawyer let him do what is necessary. I know in our office
7 last week we put out a letter to certain of our selective
8 clients saying you better get in touch with your representa-
9 tives because your PC's are about to be killed. And, I sup-
10 pose all of us do that from time to time. I guess none of us
11 disagree that there is a riot of advocacy. And, those of us
12 who practice out in hitherlands, and don't get into the State
13 Capitol to lobby, and we don't go to Washington to lobby,
14 don't really understand some of the problems they have up
15 there, but I think that one of the proposals that the staff
16 would need to look at also is that this is an authorization's
17 bill amendment, and most of these programs, or many of these
18 programs have other funds. I know when we started the one in
19 Chattanooga we delivered the solicited funds from the United
20 Way so we would be a part of the community and not be a
21 federal program, as that term was used in the South a couple
22 of years ago --

23 MR. STUBBS: It still is.

24 MR. STOPHEL: I think you are going to have to face
25 the question of the regulation as drawn restricts broadly

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1 activities, rather than restricting the use of federal funds,
2 which is what the Amendment does. I think you need to con-
3 sider, is a program restricted from using any of its funds
4 that come from other sources. I think that is a view that you
5 just need to put in the computer somewhere and see how it comes
6 out. I am not sure what would be the best, because you defi-
7 nitely don't want to blame the Congressmen who have to
8 appropriate the funds, but the other funds would make them
9 think that you are just circumventing the act and then you have
10 more problems, and I wouldn't encourage that either. But, it
11 is something that I would suggest to at least be of some con-
12 sideration.

13 MR. STUBBS: I am glad you mentioned that, Glenn,
14 because Wednesday I had a conversation with our people of the
15 splendid programs in my state, and they have had some diffi-
16 cult times with our Legislature. I raised the question whether
17 or not they ever made any effort to utilize the existing struc-
18 tures that the Bar already had, or other activities in which
19 they were closely, through which they were closely related,
20 not necessarily that, that was the answer, but it would be
21 using a device other than funds to which this limitation might
22 apply.

23 I also was a little distressed to find that the Board
24 activity, in behalf of those programs, was not as aggressive,
25 as positive as I for example found it here in Minnesota, or at

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 24 activity, in behalf of those programs, was not as aggressive,
 25 as positive as I for example found it here in Minnesota, or at

1 least as it's represented to us. Because, I think Boards can
2 frequently do things, either individually or collectively,
3 that the grant agency itself might not be able to do. And,
4 certainly, if we are talking about non-federally funded
5 agencies, this Moorhead Amendment has no direct reach. Now,
6 we have to consider, I think, the broad views of the Congress
7 as they spell them out in words affecting anything that is
8 under the broad umbrella of this activity.

9 MR. VENEY: I would just like to remind the Board
10 that the act does say that you cannot use private money for
11 things that are prohibited under the act. So, that the use of
12 United Way Money to do something that is prohibited under the
13 act, either by Moorhead or by the authorizing statute I think
14 would cause serious damage. Public money, but not private
15 money.

16 MR. SHALTZ: Mr. Chairman, will there be an oppor-
17 tunity for further public comment in the context of H.R.3480
18 this afternoon?

19 MR. STUBBS: My original notion was not to because
20 I didn't think we would be able to get through with it, and I
21 kind of backed off a little bit from that and I've got to hold
22 it up in the air to see where we go. Many of the members are
23 going to San Francisco for the ABA meeting and have to pull
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 23 going to San Francisco for the ABA meeting and have to pull
 24 out fairly early, and we may not get full exhaustion of the
 25 comments up here.

1 MR. SHALTZ: Mr. Chairman, my name is David Shaltz,
2 I am a staff attorney with Michigan Legal Services, and I
3 came today to give you a description of what legislative
4 advocacy looks like in Michigan to sort of give you an idea of
5 how we operate, and facilitate your discussion of H.R.3480. I
6 am wondering if that will be possible this afternoon?

7 MR. STUBBS: I think we will make it possible. If
8 you came all the way from Michigan we will listen. I don't
9 know if you will be able to get out alive, when was the last
10 time Minnesota beat Michigan?

11 Being there is no other comments, I would like to, if I
12 may, Mary, try to suggest that you review very carefully the
13 areas of concern that have been expressed, both from the
14 audience and from the members of the Board, and I am going to
15 suggest that we remit the draft regulation to you with the
16 request that you and your associates work it over again to
17 reflect some of the concerns that we have. I think Clarence
18 said it as well as anyone, we are not bound by what some other
19 agency construed the statute to mean, we have to, I think it's
20 helpful, but we have to work it within the context of our own
21 laws. And, your inquiry, I think, is going to have to extend
22 to the other sections of 1612 as well. I don't see how we can,
23 for example, ignore the authorization for educational programs
24 in 1612.D.2, and then they we can't, we can't do certain things
25 over here. In others words, if you all could come up with

MR. SHAW: Mr. Chairman, my name is David Shaw, I am a staff attorney with Michigan Legal Services, and I come today to give you a description of what legislative advocacy looks like in Michigan to sort of give you an idea of how we operate, and facilitate your discussion of H.R. 3480. I am wondering if that will be possible this afternoon?

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1 something that would embody more of the sense that has been
2 reflected here I think it would be more helpful to us, and I
3 would like to have that done so that we might reconsider a
4 regulation, perhaps within two months, another meeting of our
5 Committee, rather than submit it without further Committee
6 consideration to the Board. Is this agreeable with the other
7 members of the Committee?

8 (The Committee members answered affirmatively.)

9 MR. STUBBS: Ladies and Gentlemen, we are moving
10 right on onto lunch, I would like to let us recess now for
11 lunch, come back, say at 1:15 and we will hear from the
12 wolverine state and anyone else who might want to present some
13 matters generally relating to legislative advocacy, and then
14 go into such consideration as then remains timewise of the
15 provisions of 3480.

16 (Lunch break.)

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